SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. ———

UNITED STATES OF AMERICA, PETITIONER

vs.

CITY OF NEW BRITAIN, CONNECTICUT, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

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3 In Superior Court of Hartford County, State of Connecticut

Complaint

May 3, 1951

To the Sheriff of the County of Hartford, His Deputy, or Either of the Constables of the Town of New Britain Within Said County, Greeting:

By authority of the State of Connecticut, You are hereby commanded to attach to the value of $15,000.00 the goods or estate of General Laundry Service, Inc., a corporation duly organized and having its office and place of business at New Britain, Connecticut, and Sylvia Berson, Saul Berson, Arthur Berson, Henry M. Feroni and William G. Dunn, all of said New Britain, George H. Willard of Manchester, Connecticut, Tingue Brown & Company, a corporation of New York, New York and the United States of America, and them summon to appear before the Superior Court to be held at Hartford within and for the County of Hartford on the first Tuesday in June A. D. 1951, then and there to answer unto Louis Brown of said New Britain in a civil action wherein the plaintiff complains and says:

1. Upon March 28, 1946, the defendants, General Laundry Service, Inc., Sylvia Berson, Saul Berson and Arthur Berson, executed their promissory note to the order of plaintiff as follows:

"$13,000.00, New Britain, Connecticut, March 28, 1946.

"For value received we, jointly and severally promise to pay to the order of Louis Brown of New Britain, Connecticut the sum of Thirteen Thousand Dollars and interest at the rate of five percent (5%) per annum as follows: Interest in advance on unpaid balances on the first day of each month, beginning herewith, and one hundred dollars on account of principal on the first day of each month hereafter until April 1, 1956, at which time the remaining principal balance of one thousand dollars shall be paid in full, together with reasonable attorneys' fees in case of default and any taxes assessed against the holder by reason of the indebtedness evidenced hereby. We promise to pay all taxes and assessments against the premises mortgaged to secure this note promptly when due, keep the same sufficiently insured against loss by fire or other hazards for the protection of the mortgagee and maintain the same in a sound state of repair.

4 "The makers reserve the right to anticipate all or any part of this note at any time after five years and in the event of

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any default the unpaid balance shall at once become due and payable at the option of the holder.

GENERAL LAUNDRY SERVICE,
INCORPORATED,
By NATHAN BERSON,
Its President duly authorized.
SYLVIA BERSON.
SAUL L. BERSON.
NATHAN BERSON.
ARTHUR BERSON.

"Secured by mortgage on premises at South Main, Brook and Mill Streets, New Britain, Connecticut."

2. On said day the defendant, General Laundry Service, Inc., mortgaged to the plaintiff to secure said note the following described premises:

"A certain piece or parcel of land together with all buildings and improvements thereon and appurtenances thereto situated in the town of New Britain, County of Hartford and State of Connecticut, and bounded and described as follows, to wit:

"Bounded:

"Northerly by Brook Street, eighty-three and five hundredths (83.05) feet;

"Easterly by South Main Street, one hundred sixty-nine and fourteen hundredths (169.14) feet;

"Southerly by Mill Street, one hundred eighty-six and five tenths (186.5) feet; and

"Westerly by land of the Acorn Bearing Company or assigns and land of John J. and Margaret E. Crowley or assigns, partly by each, one hundred ninety-eight and forty-four hundredths (198.44) feet, more or less."

Recorded in New Britain Land Records, volume 301, page 261.

3. Upon November 18, 1946, the said defendants executed their further promissory note to the order of plaintiff in the amount of $5,000.00 as follows:

"$5,000.00, New Britain, Connecticut, November 18, 1946.

5 "For value received, we jointly and severally promise to pay to the order of Louis Brown of New Britain, Connecticut, the sum of Five Thousand Dollars and interest at the rate of (5%) per annum as follows: Interest in advance on unpaid balances commencing herewith and each three months after date, and commencing November 18, 1947, principal payments of $250.00 each three months thereafter for the period of two years, together with advance interest on unpaid balances and commencing November 18, 1949, principal payments of $375.00 each three months for two years together with said advance interest payments and until all sums due hereinunder shall have been paid

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in full, together with reasonable attorneys fees in case of default and any taxes assessed against the holder by reason of the indebtedness evidenced hereby. We promise to pay all taxes and assessments against said premises mortgaged to secure this note promptly when due, to keep the same sufficiently insured against loss by fire or other hazards for the protection of the mortgagee and maintain the same in a sound state of repair and, shall the makers fail to pay such taxes and assessments, insurance premiums or repairs, the holder may pay the same or make and pay for any such necessary repairs and add the cost thereof to the principal of this note. The makers reserve the right to anticipate all or any part of this note at any time after two years from date and, in the event of any default, the unpaid balance shall at once become due and payable at the option of the holder.

GENERAL LAUNDRY SERVICE,
INCORPORATED,
By NATHAN BERSON,
Its President duly authorized.
SYLVIA BERSON.
SAUL BERSON.
NATHAN BERSON.
ARTHUR BERSON."

4. On November 18, 1946, the defendant, General Laundry Service, Inc., to secure said note executed a second mortgage to plaintiff of the premises described in paragraph 3 hereof, recorded in the New Britain Land Records, volume 301, page 489.

5. Pursuant to the mortgagors' promise to pay all taxes and other municipal assessments and to keep the premises in a sound state of repair and to keep said premises insured and pay the premiums thereon, the plaintiff, upon default by the de-
6 fendants in the payment of premiums for fire and windstorm insurance on the mortgaged premises, was obliged to pay said premiums for the protection of said property to insurers of the same in the sum of $383.68 and because of unrepaired damage to the roof of said premises was obliged to guarantee payment of and pay for necessary repairs to said premises in the sum of $255.40, which sums have been added to the principal indebtedness of the note of November 18, 1946.

6. The defendants have defaulted in the payment of said notes and the following sums remain due and unpaid on account thereof: Upon the note of March 28, 1946, the sum of $8,424.44; upon the note of November 18, 1946, the sum of $6,400.19; plus reasonable attorney's fees for professional services from May 19, 1949 to date with respect to delinquencies on said notes and the within action.

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7. George H. Willard of Manchester, Connecticut claims an interest in said premises by reason of an attachment in the sum of $2,200.00 dated June 22, 1950, and recorded June 21, 1950, in the New Britain Land Records, volume 343, page 30.

8. Henry M. Feroni of New Britain, Connecticut claims an interest in said premises by reason of a five-year lease of part of said premises, dated August 1, 1946, and recorded in the New Britain Land Records, August 27, 1946, volume 306, page 351.

9. William G. Dunn, of New Britain, Connecticut claims an interest in said premises by reason of an attachment in the sum of $3,000.00 dated and recorded August 18, 1950 in the New Britain Land Records, volume 343, page 309.

10. Tingue Brown & Company of New York, New York, claim an interest in said premises by reason of an attachment in the sum of $499.00 dated and recorded February 2, 1941, in the New Britain Land Records, volume 347, page 531.

11. The United States of America claims an interest in said premises by reason of a lien by John W. Fitzpatrick, collector at Hartford, Connecticut, for federal insurance contributions, withholding taxes and federal unemployment taxes in the sum of $8,475.13 for the period of January 1, 1947, to June 30, 1950, which lien was recorded March 19, 1951 in the New Britain Land Records, volume 350, page 93.

12. Taxes are due and unpaid to the city of New Britain on said premises as follows:

7	General taxes on lists of 1946 to 1950	$3017.18
	Water assessments to date	440.29
	Total	3457.47

13. A filling station and residence on said premises are rented by the mortgagor and the rentals should be applied to delinquent taxes and other obligations of the mortgagor on the said premises for the protection of the plaintiff and other lien claimants.

The plaintiff claims:

1. A receiver of rents,
2. A foreclosure of said mortgage by sale,
3. Allowance of attorney's fees of $250.00.

M. H. Camp of said New Britain is recognized in $75.00 to prosecute, etc.

Of this writ, with your doings thereon, make due service and return.

Dated at New Britain, Connecticut this 3d day of May A. D. 1951.

CARLOS A. RICHARDSON,
Commissioner of the Superior Court for Hartford County.

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In Superior Court of Hartford County

Filed May 29, 1951

Answer of the defendant, United States of America

1. The allegations of paragraph 11 of the Complaint are admitted.

2. As to all other allegations of the Complaint, this defendant has no knowledge or information.

UNITED STATES OF AMERICA,
By ADRIAN W. MAHER,
United States Attorney.
By EDWARD J. LONERGAN,
Assistant United States Attorney.

8 In Superior Court of Hartford County

[Title omitted.]

Judgment

June 22, 1951

This action by writ, dated May 3, 1951, and complaint, claiming foreclosure of two mortgages on land hereinafter described and sale of the mortgaged premises, as on file, came to this Court on the first Tuesday of June 1951, and thence to the present time, when the plaintiff and the defendants William G. Dunn and Tingue Brown and Company and the United States of America appeared, but the defendants General Laundry Service, Inc., Sylvia Berson, Saul Berson, Arthur Berson and Henry M. Feroni and George H. Willard made default of appearance. The Court finds that service of said writ was duly made upon said defaulting defendants, to wit: General Laundry Service, Inc., Sylvia Berson, Saul Berson, Arthur Berson and Henry M. Feroni and George H. Willard all of which appears by the officers return indorsed on said writ.

The Court further finds that all the defaulting defendants have received actual notice of the pendency of this action. The description of said land as set forth in the complaint is as follows:

"A certain piece or parcel of land together with all buildings and improvements thereon and appurtenances thereto situated in the town of New Britain, county of Hartford and State of Connecticut, and bounded and described as follows, to wit:

9 "Bounded:

"Northerly by Brook street, eighty-three and five-hundredths (83.05) feet;

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"Easterly by South Main Street, one hundred sixty-nine and fourteen hundredths (169.14) feet;

"Southerly by Mill Street, one hundred eighty-six and five tenths (186.5) feet; and

"Westerly by land of the Acorn Bearing Company or assigns and land of John J. and Margaret E. Crowley or assigns, partly by each, one hundred ninety-eight and forty-four hundredths (198.44) feet, more or less."

And now the Court having heard the plaintiff and the appearing defendants having failed to disclose any defense in response to plaintiff's motion for such disclosure no plea or answer being filed, finds all the allegations of the complaint true and that the sum of Fourteen Thousand Nine Hundred Seventy-four and 63/100 dollars, is due from the defendants to the plaintiff on the mortgage debt therein mentioned, including $383.68 paid by the plaintiff for insurance, $255.40 paid by the plaintiff for necessary repairs on said mortgaged premises and an allowance of $150.00 on plaintiff's attorney fees.

Upon the written motion of said Louis Brown that the foreclosure of said mortgage, if granted be by a decree of sale, this court is of the opinion that a foreclosure by sale should be decreed.

Whereupon it is adjudged: That Martin H. Horwitz of New Britain, Connecticut is appointed to sell the mortgaged premises above described; that he shall sell the same as a whole, at public auction, on the premises, on Wednesday the 15th of August 1951 at three o'clock in the afternoon; unless, at or before said time, said sum above found to be due upon said mortgage debt, together with legal interest upon the same to the date of payment from the date of this judgment, and the costs of this suit as taxed at this date, amounting to _____ dollars and such expenses for advertising and for the services of Martin H. Horwitz as such committee as may have been incurred at the date of such payment, and the cost of the appraisal hereinafter directed, if previously made and returned, all to be taxed by the clerk, be paid by one or more of the defendants to the plaintiff, in which case said sale shall not take place; that he shall advertise such sale by publishing a notice thereof, containing a description of the premises, in the New Britain Herald, a daily newspaper printed at New Britain not less than three times and in the Hartford Courant, a daily newspaper printed at Hartford, Conn., not less than three times, each publication to be once a week for three successive weeks, the final publications of notice to be not less than one week before August 15, 1951, the date of sale; that when such sale shall have been made by said Martin H. Horwitz, pursuant to this judgment, he shall execute and submit for the approval of this court, a conveyance of the prem-

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ises to the purchaser, and make a return of his doings and bring the proceeds of such sale into court; that Clesson W. Parker and Roy L. Noren, both of New Britain, Conn., and George H. Hamlin of Berlin, Conn., disinterested persons, are appointed to appraise said property under oath and make return of their appraisal to the clerk of this court, on or before July 6, 1951; and that the plaintiff shall be allowed his costs, including the expense of the appraisal, to be taxed and paid out of the proceeds of said sale.

By the Court:

ROBERT L. ALLYN,
Assistant Clerk.

In Superior Court of Hartford County

Motion to be made party defendant

December 18, 1951

The city of New Britain represents that it has an interest in the above-entitled matter; that paragraph 12 of the Complaint states its interest; that it has been allowed to file a brief relative to its claim for taxes and water rents; that the Court's Memorandum of Decision, dated December 18, 1951, found that the liens of the city of New Britain take priority over the liens of the United States; that the United States has filed its intention to appeal; and that unless the city of New Britain is made a party defendant it cannot take part in said appeal as it should do.

Wherefore, the city of New Britain moves that the Court direct that the city of New Britain be made a party defendant nunc pro tunc as of the date of Judgment.

CITY OF NEW BRITAIN,
By HAROLD KOPLOWITZ,
Its Attorney.

11 *Order*

It appearing to the Court that the city of New Britain ought to be joined as a codefendant in the above-entitled cause, it is hereby ordered and directed that the said city of New Britain be, and it is hereby made, a defendant herein.

Dated at ---------- this 18th day of December A. D. 1951.

JOHN M. COMLEY,
Judge.

CONSENTED TO UNITED STATES OF AMERICA,
By EDWARD J. LONERGAN,
Assistant United States Attorney.

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In Superior Court of Hartford County

Memorandum of decision

Filed December 19, 1951

It seems to me that the case of United States v. Security Trust and Savings Bank of San Diego establishes the priority of the federal lien over the lien of Tingue, Brown & Co. While it is true that the attachment laws of California differ in some respects from the attachment laws of Connecticut, I see no escape from the proposition advanced in that case; "Nor can the doctrine of relation back—which by process of judicial reasoning merges the attachment lien in the judgment and relates the judgment lien back to the date of attachment—operate to destroy the realities of the situation." When all is said and done, the inescapable fact remains that when the government filed its lien on March 19, 1951, Tingue, Brown & Co. had no judgment lien. Its judgment lien did not come into existence until the following May 12th. Although for some purposes the lien then relates back to the date of attachment, Tingue, Brown & Co. was not a "judgment creditor" on March 19th. U. S. C. A. 3672 (a) makes that the test in providing that "such lien shall not be valid as against any mortgagee, pledgee, purchaser or judgment creditor until notice thereof has been filed by the collector."

I, therefore, hold that the federal tax lien takes precedence over the judgment lien of Tingue, Brown & Co.

The claim of the city of New Britain for taxes and water rents stands upon a different basis. These liens are created by the State of Connecticut and represent an attribute of sovereignty. Whether Congress by appropriate action could provide for the priority of federal tax liens over these liens for local taxes
12 presents a question which need not be decided for the fact is that no such provision has been made, at least where the taxpayer is not insolvent.

See City of Winston-Salem v. Powell Paving Co., 7 Fed. Supp. 424.

Ferris v. Chic-Mint Gum Co., 124 Atl. 577.

It is, therefore, found that the liens of the city of New Britain for taxes totaling $3,075.07 and for water rent totaling $512.64 take priority over the liens of the United States.

COMLEY, *J.*

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In Superior Court of Hartford County

Affidavit

Filed September 28, 1951

I, Joseph I. Kopelman, Acting Chief of the Legal Section of the Bureau of Internal Revenue for the District of Connecticut, being duly sworn depose and say, that in my official capacity indicated, am in charge of the records in the Bureau. It appears that notice and demand was given to and made upon the tax payer for each of the assessment lists received by the Collector of Internal Revenue, as set forth in the last column of the Government's exhibit filed with the Superior Court in the case of Louis Brown v. General Laundry Services, Inc.

Dated at Hartford, Connecticut, this 27th day of September 1951.

JOSEPH I. KOPELMAN,
Acting Chief of the Legal Section,
Bureau of Internal Revenue,
For the District of Connecticut.

Subscribed and sworn to before me this 27th day of September 1951.

EDWARD J. LONERGAN,
Commissioner of the Superior Court.

13 In Superior Court of Hartford County

[Title omitted.]

Supplemental judgment

December 18, 1951

A decree of foreclosure by sale having been rendered in the above-entitled action on June 22, 1951, and the cause having come to the present time for the rendering of a supplementary judgment, and the plaintiff and the defendants, William G. Dunn and Tingue Brown & Company having again appeared and been fully heard and the city of New Britain having filed a brief in its behalf, and the defendants, General Laundry Service, Inc., Sylvia Berson, Saul Berson, Arthur Berson, Henry M. Feroni and George H. Willard having again made default of appearance and no remonstrance being filed, this court finds that the mortgaged premises described in said decree were not redeemed from said mortgage, and have been sold by Martin H. Horwitz appointed for that purpose, to Louis Brown of New Britain, Connecticut, the plaintiff in said action; that said Martin H. Horwitz has executed

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and submitted for the approval of this court a conveyance of said premises to said Louis Brown and has brought into court the said proceeds of said sale above the debt and costs of said Louis Brown, to wit: the sum of Twelve Thousand One Hundred Eighty Dollars and Sixty Five Cents ($12,180.65), and made return of his doings as on file and has turned into court, as receiver of rents duly appointed as on file appears, the further sum of Five Hundred Seventy One Dollars and Twenty Four Cents ($571.24) with an account of his doings as such receiver of rents; that the appraisers,

Clesson W. Parker, Roy M. Noren and George Hamlin have
14 appraised said premises under oath at Twenty Seven
Thousand Five Hundred Dollars ($27,500.00) and made return of such appraisal to the clerk of this court as on file; all of which has been done pursuant to said decree.

The court further finds that the expenses of said sale and appraisal are as follows: Appraisers, Clesson W. Parker, $30.00, Roy M. Noren, $30.00, George Hamlin, $30.00, Clerk for holding and disbursing proceeds, $22.00, Martin H. Horwitz for services in making said sale as shown on his committee's report, $1,325.00 and for his expenses thereon, $264.09 and said Martin W. Horwitz for services and costs of bond as receiver of rents, $60.00, a total expense of $1,761.09 and that after the payment of said expenses there will remain of the proceeds of said sale above the debt and costs of the plaintiff as purchaser, the sum of $10,419.56, plus the further proceeds of rents collected by said receiver of rents in the amount of $571.24, or a total of proceeds of $10,990.80.

The defendant, George H. Willard, having defaulted in appearance and having failed to plead and the plaintiff having filed his motion for disallowance of any claim by him and for discharge of the attachment filed by him as in the complaint on file on the grounds that his said action in which said attachment was made has not been returned to the Court of Common Pleas for Hartford County, the court to which it was returnable, on the first Tuesday of August 1950, now, therefore, the claim of said George Willard is disallowed and the lien of said attachment is hereby released and discharged.

The court finds that there is due at this date from the defendants to parties in this action, upon the incumbrances designated, in order of their priority, sums as follows: To the city of New Britain for general taxes due on the foreclosed premises on the lists of 1946 to 1950, inclusive, $3,075.07; water assessments to date $512.64, a total of $3,587.71; to Louis Brown, the plaintiff, holder of the first and second mortgages, including his costs taxed at $137.58, the sum of $15,319.35; to William G. Dunn of New Britain, Connecticut, holder of a judgment lien, the sum of $2,017.18; to

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the United States of America, holder of a tax lien, the sum of $8,475.13, and that, the defendant General Laundry Service, Inc., is in possession of said premises.

Whereupon, it is adjudged that said sale is ratified and confirmed and said conveyance is approved; that the defendant
15 General Laundry Service, Inc., shall deliver up the premises to the purchaser; that the clerk of this court shall first pay out of the proceeds the expenses thereof to the persons to whom they are hereinbefore found to be due which includes $22.00 to the Clerk of Court in a total amount of $1,761.09 and shall pay the remainder of said proceeds as follows:

City of New Britain	$3,587.71
William G. Dunn, c/o Attorney Israel Nair, New Britain	2,017.18
United States of America	5,385.91
Total	10,990.80

JOHN M. COMLEY,
Judge.

Recapitulation:	
Expenses	$1,761.09
City of New Britain	3,587.71
L. Brown	15,319.35
Wm. G. Dunn	2,017.18
United States of America	5,385.91
	28,071.24
Sale price	27,500.00
Rents received	571.24
	28,071.24

In Superior Court of Hartford County

[Title omitted.]

Appeal of the United States of America to the Supreme Court of Errors

March 12, 1952

In the above-entitled action, the Defendant, United States of America, appeals to the Supreme Court of Errors from the Judgment rendered therein concerning the relative priority of the claim of the United States of America and the city of
16 New Britain to the proceeds of the sale of the real estate involved in the action.

Dated at Hartford, Connecticut, this 12th day of March 1952.

DEFENDANT,
UNITED STATES OF AMERICA,
By ADRIAN W. MAHER,
United States Attorney.
By EDWARD J. LONERGAN,
Assistant United States Attorney.

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I certify that the foregoing appeal was filed on March 13, 1952, and that the record and entry fees have been paid.

ROBERT L. ALLYN,
Assistant Clerk.

(Pursuant to 28 U. S. C. 2408, no bond for cost is required of the United States of America.)

In Superior Court of Hartford County

Stipulation of facts

(Filed April 16, 1952)

It is hereby stipulated and agreed by and between the city of New Britain and the United States of America that the following facts may be found by the Court:

1. This foreclosure action was instituted on May 3, 1951, returnable to the Superior Court for Hartford County on the first Tuesday of June 1951. A Judgment of Foreclosure by Sale was entered by the Court on June 22, 1951. The premises were sold at public sale for $27,500.00 on the 15th day of August 1951, and the proceeds of the sale were paid by the committee to the Clerk of the Court.

2. The city of New Britain was made a party defendant nunc pro tunc by order of the Superior Court on March 18, 1952.

3. The present controversy is between the city of New Britain and the United States of America as to which is entitled to priority in the distribution of the proceeds.

4. The claim of the city of New Britain is based on tax liens for the years 1947 to 1951, inclusive, and on water rent due the Board of Water Commissioners, the items of each of which are as follows:

City taxes

(a)

Date due	Tax	Interest	Lien	Total
10-1-47	$495.89	$128.93	$3.75	$628.57
10-11-48	503.19	91.81	3.75	598.75
17 9-1-49	539.65	75.55	3.75	618.95
1950	557.15	44.57	3.75	605.47
1951	611.11	12.22		623.33

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(b) The water rent due is as follows:

Date due	Water rent	Penalty	Interest	Lien	Total
8 BROOK STREET					
12-1-47	$3.15	$0.32	$0.72		$4.19
6-1-48	4.70	.47	.98		6.15
12-1-48	3.15	.32	.54	$0.50	4.51
6-1-49	4.17	.42	.65	.50	5.74
12-1-49	4.31	.43	.52	.50	5.76
6-1-50	4.31	.43	.39	.50	5.63
12-1-50	3.50	.35	.22	.50	4.57
6-1-51	4.80	.48	.17		5.45
Total					42.00
453 SOUTH MAIN STREET					
6-1-49	96.10				96.10
12-1-49	120.37		2.02		122.39
6-1-50	110.92		9.99		120.91
12-1-50	103.56		6.22		109.78
6-1-50	56.16	5.62	1.68		63.46
Total					512.64
467 SOUTH MAIN STREET					
6-1-51	5.44	.54	.07		6.05
Total					6.05
Grand total					560.69

5. The Government gave notice to the taxpayer, General Laundry Service, Inc., of the taxes due from it and made demand on it for payment of such taxes in the amount of $8,475.13. Payment was not made. Notice of Federal tax lien in said amount was then filed in the office of the town clerk of New Britain and in the office of the Clerk of the United States District Court in New Haven. The items making up said lien are as follows:

18 *Nature of tax*	*Year or taxable period ended*	*Date assessment list received*	*Amount of assessment*
FIC	1st quarter 1949	June 20, 1949	$212.76
FIC	3d quarter 1949	Dec. 16, 1949	245.48
FIC	1st quarter 1950	June 5, 1950	100.00
FIC	2d quarter 1950	Sept. 21, 1950	291.88
Federal unemployment	Year of 1948	July 26, 1950	6.72
Withholding	4th quarter 1947	Apr. 26, 1948	357.07
Withholding	2d quarter 1948	Oct. 22, 1948	1,152.90
Withholding	3d quarter 1948	Jan. 14, 1949	991.60
Withholding	4th quarter 1948	Apr. 27, 1949	1,038.14
Withholding	1st quarter 1949	May 27, 1949	1,002.29
Withholding	2d quarter 1949	Aug. 29, 1949	885.45
Withholding	3d quarter 1949	Nov. 28, 1949	1,000.65
Withholding	1st quarter 1950	June 5, 1950	300.00
Withholding	2d quarter 1950	Sept. 21, 1950	890.19
Total			8,475.13

6. Each of the items indicated in the Government's tax lien bears interest from their respective assessment dates.

7. The Superior Court held that the city's liens for water and taxes took precedance over the Federal tax liens and its com-

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ponent parts and should be first paid from the proceedings of the sale and a supplemental judgment was entered accordingly on December 18, 1951.

8. The question of law which these parties desire to have reviewed is:

Did the Court err in deciding that the tax liens and water liens of the city of New Britain take precedence over the Government's tax lien and its component parts in the distribution of the proceeds of the sale of the real estate?

Dated at Hartford, Connecticut, this 15th day of April 1952.

CITY OF NEW BRITAIN,
By HAROLD KOPLOWITZ,
Its Attorney.
UNITED STATES OF AMERICA,
By ADRIAN W. MAHER,
United States Attorney.
By EDWARD J. LONERGAN,
Assistant United States Attorney.

19 In Superior Court of Hartford County

Finding

Filed May 29, 1952

FIRST

Upon the basis of a stipulation submitted to this court by the parties, the following facts are found:

1. This foreclosure action was instituted on May 3, 1951, returnable to the Superior Court for Hartford County on the first Tuesday of June, 1951. A Judgment of Foreclosure by Sale was entered by the Court on June 22, 1951. The premises were sold at public sale for $27,500.00 on the 15th day of August, 1951, and the proceeds of the sale were paid by the committee to the Clerk of the Court.

2. The City of New Britain was made a party defendant nunc pro tunc by order of the Superior Court on March 18, 1952.

3. The present controversy is between the City of New Britain and the United States of America as to which is entitled to priority in the distribution of the proceeds.

4. The claim of the City of New Britain is based on tax liens for the years 1947 to 1951, inclusive, and on water rent due the Board of Water Commissioners, the items of each of which are as follows:

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City taxes

(a)

Date due	Tax	Interest	Lien	Total
10-1-47	$495.89	$128.93	$3.75	$628.57
10-11-48	503.19	91.81	3.75	598.75
9-1-49	539.65	75.55	3.75	618.95
1950	557.15	44.57	3.75	605.47
1951	611.11	12.22		623.33

(b) The water rent due is as follows:

Date due	Water rent	Penalty	Interest	Lien	Total
8 BROOK STREET					
12-1-47	$3.15	$0.32	$0.72		$4.19
6-1-48	4.70	.47	.98		6.15
12-1-48	3.15	.32	.54	$0.50	4.51
6-1-49	4.17	.42	.65	.50	5.74
12-1-49	4.31	.43	.52	.50	5.76
6-1-50	4.31	.43	.39	.50	5.63
12-1-50	3.50	.35	.22	.50	4.57
6-1-51	4.80	.48	.17		5.45
Total					42.00
20 453 SOUTH MAIN STREET					
6-1-49	96.10				96.10
12-1-49	120.37		2.02		122.39
6-1-50	110.92		9.99		120.91
12-1-50	103.56		6.22		109.78
6-1-50	56.16	5.62	1.68		63.46
Total					512.64
467 SOUTH MAIN STREET					
6-1-51	5.44	.54	.07		6.05
Total					6.05
Grand total					560.69

5. The Government gave notice to the taxpayer, General Laundry Service, Inc., of the taxes due from it and made demand on it for payment of such taxes in the amount of $8,475.13. Payment was not made. Notice of Federal tax lien in said amount was then filed in the office of the town clerk of New Britain and in the office of the Clerk of the United States District Court in New Haven on March 19, 1951. The items making up said lien are as follows:

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Nature of tax	*Year or taxable period ended*	*Date assessment list received*	*Amount of assessment*
FIC	1st quarter 1949	June 20, 1949	$212.76
FIC	3d quarter 1949	Dec. 16, 1949	245.48
FIC	1st quarter 1950	June 5, 1950	100.00
FIC	2d quarter 1950	Sept. 21, 1950	291.88
Federal unemployment	Year of 1948	July 26, 1950	6.72
Withholding	4th quarter 1947	Apr. 26, 1948	357.07
Withholding	2d quarter 1948	Oct. 22, 1948	1,152.90
Withholding	3d quarter 1948	Jan. 14, 1949	991.60
Withholding	4th quarter 1948	Apr. 27, 1949	1,038.14
Withholding	1st quarter 1949	May 27, 1949	1,002.29
Withholding	2d quarter 1949	Aug. 29, 1949	885.45
Withholding	3d quarter 1949	Nov. 28, 1949	1,000.65
Withholding	1st quarter 1950	June 5, 1950	300.00
Withholding	2d quarter 1950	Sept. 21, 1950	890.19
Total			8,475.13

21 6. Each of the items indicated in the Government's tax lien bears interest from their respective assessment dates.

SECOND

The court reached the following conclusions:

7. The city's liens for water and taxes took precedence over the Federal tax liens and its component parts and should be first paid from the proceeds of the sale and a supplemental judgment was entered accordingly on December 18, 1951.

THIRD

The United States of America made the following claim of law which the court overruled and rendered judgment as on file.

8. The tax liens and water liens of the city of New Britain did not take precedence of the claims of the United States of America for taxes in the distribution of the proceeds of the sale of the real estate.

COMLEY, *J.*

In Superior Court of Hartford County

Assignment of errors

The Court erred:

1. In determining that the tax liens and the water liens of the city of New Britain took priority over the tax lien of the United States.

UNITED STATES OF AMERICA,
By ADRIAN W. MAHER,
United States Attorney.
By EDWARD J. LONERGAN,
Assistant United States Attorney.

[Clerk's certificate to foregoing transcript omitted in printing.]

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23 In Supreme Court of Errors

November Term, 1952

LOUIS BROWN
v.
GENERAL LAUNDRY SERVICE, INC., ET AL.

Appeal from a supplemental judgment, Comley, J., rendered in an action of foreclosure in the Superior Court in Hartford County, determining that the liens of the city of New Britain for taxes and water rates due from the named defendant are entitled to priority over the liens of the United States for taxes owed by that defendant. No error.

Louise Foster, of the District of Columbia bar, special assistant to the attorney general, with whom were Edward J. Lonergan, assistant United States attorney, and, on the brief, Adrian W. Maher, United States attorney, and A. F. Prescott, special assistant to the attorney general, for the appellant (defendant United States) .

Harold Koplowitz, for the appellee (defendant city of New Britain).

Opinion

INGLIS, *J.* The question to be decided on this appeal is whether, in an action to foreclose mortgages on real property, the general liens for taxes due the United States have priority over perfected municipal liens for taxes and water rates assessed against the property in question.

The action was instituted to foreclose the first and second mortgages on real property located in New Britain and owned by the named defendant. The first mortgage was dated March 28, 1946, and the second, November 18, 1946. A judgment of foreclosure by sale was rendered on June 22, 1951. Pursuant thereto, the property was sold for $27,500. In the supplemental judgment, the court found that the property was subject to the following incumbrances: the two mortgages to the plaintiff; a judgment lien dating from August 18, 1950, in favor of the defendant Dunn; liens for taxes and water assessments due the city of New Britain, totaling $3,587.71; and liens in favor of the United States for various taxes, in the total amount of $8,475.13 plus interest. The tax liens of the city were for taxes which had become due in 1947, 1948, 1949, 1950, and 1951. The due dates of water rates for which the property was subject to liens ran from December 1, 1947 to June 1, 1951. The liens of the United States were for (1) Federal insurance contributions for two quarters in 1949 and two

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quarters in 1950, the assessment lists of which had been received by the collector shortly after their respective due dates; (2) Federal unemployment contributions for the year 1948, the assessment list of which had been received on June 26, 1950; and (3) withholding taxes, the assessment lists of which had been received at various times between April 26, 1948, and September 21, 1950. The Government had given notice to the taxpayer, the named defendant, and demanded payment of the amount of the taxes. It had also, on March 19, 1951, filed notice of its tax liens in the office of the town clerk in New Britain and in the office of the clerk of the United States District Court in New Haven.

In addition to the proceeds of the sale of the mortgaged property, a receiver of rents reported that he had collected a net amount of $571.24, so that there was available for distribution a total amount of $28,071.24. By its supplemental judgment, the court ordered distribution to the respective parties in the following amounts and the following order: to the committee and others, for the expenses of the sale, $1,761.09; to the city of New Britain, $3,587.71; to the plaintiff, $15,319.35; to the Defendant Dunn, the judgment lienor, $2,017.18; to the United States, the balance remaining—$5,385.91. From this judgment the United States has appealed. It does not attack so much of the judgment as directs the satisfaction in full of the claims of the plaintiff and the defendant Dunn. It does contend that its claim should have been given priority over that of the city of New Britain.

The city's claim of priority is based on §§ 1853 and 758 of the General Statutes. Section 1853 reads: "The interest of each person in each item of real estate, which shall have been legally set in his assessment list, shall be subject to a lien for that part of his taxes laid upon the valuation of such interest, as found in such list when finally completed * * *." It goes on to provide that the lien shall exist from the first day of October or other assessment date of the municipality in the year previous to that in which the tax shall have become due "and, during its existence, shall take precedence of all transfers and incumbrances, in any manner affecting such interest in such item, or any part of it." Section 758, after authorizing municipalities to assess water rates against the owners of properties connected with its water system, provides that such rates or charges, if not paid when due, shall constitute a lien upon the premises served, which lien shall take precedence over all other liens or incumbrances except taxes. The word "taxes" as here used means only those taxes which may be assessed in favor of the state or some subdivision thereof and which, under the law, are secured by specific liens upon real property. So far as state law is effective, it is clear that the liens of the city of New

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Britain on the property under foreclosure would take precedence over any other incumbrance on the property, irrespective of the time at which that incumbrance might have attached.

24 The first question, therefore, is whether the state law is effective to control the decision of this case or whether the Federal Government has the power to override, and, acting by the Congress, has overridden, the state legislation. The State of Connecticut is a sovereign state in its own right and to a certain extent is, in the exercise of sovereign power, independent of the United States. Hoxie v. New York, N. H. & H. R. Co., 82 Conn. 352, 355, 73 A. 754. The power to authorize its subdivisions to assess taxes and to provide means whereby the collection of those taxes may be secured is an exercise of the state's sovereignty. On the other hand, the states, by ratifying the federal constitution, have delegated to the United States the power to levy and collect taxes. U. S. Const. Art. 1 § 8. Furthermore, the states have agreed, by ratifying article VI of the federal constitution, that any constitutional enactment of the Congress shall be the supreme law of the land. It follows that the Congress has the power to make provision for the collection of any properly laid tax by enacting that the tax shall be a lien taking precedence over all other liens, even those for taxes assessed by a state. Michigan v. United States, 317 U. S. 338, 340, 63 S. Ct. 302, 87 L. Ed. 312; United States v. Snyder, 149 U. S. 210, 214, 13 S. Ct. 846, 37 L. Ed. 705; United States v. San Juan County, 280, F. 120, 121; Exchange National Bank v. United States, 147 Wash. 176, 182, 265 P. 722. Whether Congress has exercised that power to the extent that it has given the Federal liens priority over those in favor of the city of New Britain is the crucial question in the present case.

The enactment of Congress upon which the Federal Government bases its claim in this case, and the only Federal legislation pertinent to the present situation, is §§ 3670–3672 of the Internal Revenue Code. 53 Stat. 448, as amended, 26 U. S. C. §§ 3670–3672 (1946). The relevant portions of those sections are quoted in the footnote.[1] To summarize them, §§ 3670 and 3671 provide

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[1] "SEC. 3670. PROPERTY SUBJECT TO LIEN. If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

"SEC. 3671. PERIOD OF LIEN. Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.

"SEC. 3672. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS. (a) Invalidity of lien without notice.—Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector. (1) Under state or territorial laws.—In the office in which the filing of such notice is authorized by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory

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that the amount of any tax due to the United States shall be a lien upon all the property and rights to property of the debtor, which "lien shall arise at the time the assessment list was received by the collector" and shall continue until the tax has been paid or has become unenforceable. Section 3672 provides that the lien shall not be valid "as against any mortgagee, pledgee, purchaser, or judgment creditor" until notice thereof has been filed by the collector either in some office designated by the law of the state in which the property subject to the lien is situated or, failing such designation, in the office of the United States District Court.

The United States has cited a long line of cases which hold that under some circumstances debts due the United States take precedence over antedating liens for taxes due a state or municipality, where the latter are general and inchoate. Illinois ex rel. Gordon v. Campbell, 329 U. S. 362, 370, 67 S. Ct. 340, 91 L. Ed. 348; New York v. Maclay, 288 U. S. 290, 292, 53 S. Ct. 323, 77 L. Ed. 754; Spokane County v. United States, 279 U. S. 80, 93, 49 S. Ct. 321, 73 L. Ed. 621; Stover v. Scotch Hills Coal Co., 4 F. 2d 748; Spokane Merchants' Assn. v. State, 15 Wash. 2d 186, 188, 189, 130 P. 2d 373; Exchange National Bank v. United States, 147 Wash. 176, 182, 265 P. 722; United States v. Texas, 314 U. S. 480, 486, 62 S. Ct. 350, 86 L. Ed. 356; United States v. Reese, 131 F. 2d 466, 468. The distinguishing feature of these cases is that they were all decided under § 3466 of the Revised Statutes (1875), 31 U. S. C. § 191 (1946). Section 3466 provides: "Whenever any person indebted to the United States is insolvent * * * the debts due to the United States shall be first satisfied * * *" This section applies only to cases in which the person indebted to the United States has been adjudged insolvent. It has no application in a case such as the present, in which the taxpayer has not been so adjudged. Equitable Trust Co. v. Connecticut Brass & Mfg. Corporation, 290 F. 712, 719.

Nor does the reasoning by which the result was reached in the cases relied upon by the Government apply to the situation involved in the present case. In each of them the lien for state taxes was both inchoate and general at the time the Federal lien attached. In the instant case the liens in favor of the municipality were both perfected and specific. See United States v. Alabama, 313 U. S. 274, 280, 61 S. Ct. 1011, 85 L. Ed. 1327; Merchants Bank & Trust Co. v. Pettison, 112 Conn. 652, 656, 153 A. 789. In a case falling within the provisions of § 3466, it would obviously be so, as the cases hold, that the United States must be

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has by law authorized the filing of such notice in an office within the State or Territory; or (2) With clerk of district court.—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law authorized the filing of such notice in an office within the State or Territory. * * *"

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paid first out of the insolvent's assets and that those assets would consist of all of his property except to the extent that it was subject to a perfected and specific lien. The existence of a general or inchoate lien against the property of an insolvent would not deprive him of his property rights in any of his particular assets.

In this respect § 3466 is fundamentally different from
25 §§ 3670–3672. As will appear presently, §§ 3670–3672 make no provision for the priority of Federal liens over antedating liens in favor of others even though the latter may be inchoate and general. There is nothing in the opinion in United States v. Security Trust & Savings Bank, 340 U. S. 47, 71 S. Ct. 111, 95 L. Ed. 53, to indicate, as claimed by the Government, that this fundamental difference does not exist. Accordingly, § 3466 has no application either directly or by analogy to the present case. Equitable Trust Co. v. Connecticut Brass & Mfg. Corporation, supra, 723. That brings us to a reassertion that the case at bar, so far as the rights of the United States are concerned, is controlled exclusively by the provisions of §§ 3670–3672.

The important consideration with reference to §§ 3670 and 3671, taken by themselves and without reference to § 3672, is that not only do they omit to provide expressly that the Federal lien shall take precedence over any antedating lien but also they in terms provide that the lien shall "arise" at the time the assessment list is received by the collector. It exists only from that time. The United States has no lien rights other than those created by statute. Equitable Trust Co. v. Connecticut Brass & Mfg. Corporation, supra, 718. The scope and effect of its liens are to be determined solely from the statute and the proper interpretation thereof. MacKenzie v. United States, 109 F. 2d 540, 541. Accordingly, nothing can be read into the two sections to enlarge the effect of liens over and above the effect which the plain wording of the statute gives to them. Inasmuch as these two sections expressly date a lien only from the time the collector receives the assessment list, the liens in question have no priority over incumbrances which antedate them. The principle ordinarily applicable to the determination of priority of incumbrances, namely, first in order of time, first in right, applies. United States v. Greenville, 118 F. 2d 963, 966. The most that the United States could take under §§ 3670 and 3671 would be priority for its liens over those municipal liens which attached after its liens became effective. That is to say, the liens, whether they are in favor of the United States or the city of New Britain, would have priority in the order of the times at which they came into existence. See Citizens Bank v. Vidal, 114 F. 2d 380, 384. The municipal liens for taxes were specific, since they were on a particular piece of property. Though inchoate, they attached on the first day of

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October in the year preceding that in which the taxes became due. General Statutes § 1853; United States v. Sampsell, 153 F. 2d 731, 734. The liens for water rates attached as those rates became due. General Statutes § 758. The Federal liens attached and became perfected on the dates when the assessment lists were received by the collector.

So much for the result which would be reached in this case if only §§ 3670 and 3671 of the Internal Revenue Code were applied. The application of § 3672 brings about a different result. The property under foreclosure was subject to two mortgages and a judgment lien. Since these had been placed on the property before notice of the Federal liens was filed in the town clerk's office or in the office of the clerk of the United States District Court, they had priority over the Federal liens. On the other hand, they were subordinate to the municipal liens. General Statutes § 1853; Wilcox v. Bliss, 116 Conn. 329, 334, 164 A. 659.

By authority of §7192 of the General Statutes, it would have been permissible for the mortgagee to pay the municipal taxes and water rates, and if he had done so the amount thereof would have been added to his debt. Having become a part of his debt, they clearly, under § 3672 of the Internal Revenue Code, would have to be satisfied before the property could be applied to the satisfaction of the federal taxes. It would indeed be an anomalous situation if the priority of the liens for municipal taxes and water rates over the Federal liens were dependent upon the election of the mortgagee to pay the amounts due to the city.

Moreover, if priority were accorded to the Federal liens over those of the municipality, the result would have to be that either the rank of the municipal liens would be reduced below that of the mortgages and judgment lien, which would be in violation of the State law, or the position of the Federal liens would be moved up to a place ahead of the mortgages and judgment lien, in violation of § 3672. It can hardly be assumed that the Congress intended any such result. The only reasonable interpretation of § 3672 is that the Congress, in enacting it, expressed the intention that Federal liens should be subordinated to such mortgages and judgment liens as are described therein and, consequently, subordinated to such other incumbrances as have priority over those mortgages and judgment liens. Ferris v. Chic-Mint Gum Co., 14 Del. Ch. 232, 239, 124 A. 577; Board of Supervisors v. Hart, 210 La. 78, 93, 26 So. 2d 361. In other words, the Congress has not undertaken so to legislate that, under the circumstances present in this case, the Federal liens would have priority over the municipal liens. It follows that the trial court was correct in concluding that liens of the city of New Britain for taxes and

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water rates had priority over the mortgages, the judgment lien and the liens of the United States.

There is no error.

In this opinion the other judges concurred.

26 In Supreme Court of Errors of the State of Connecticut

LOUIS BROWN OF NEW BRITAIN

v.

GENERAL LAUNDRY SERVICE, INC., SYLVIA BERSON, SAUL BERSON, ARTHUR BERSON, HENRY M. FERONI AND WILLIAM G. DUNN, ALL OF NEW BRITAIN, GEORGE H. WILLARD, OF MANCHESTER, TINGUE BROWN & COMPANY, OF NEW YORK, NEW YORK AND UNITED STATES OF AMERICA

ON APPEAL FROM SUPERIOR COURT HARTFORD COUNTY

Judgment

December 30, 1952

This appeal by the defendant the United States of America from the judgment of said Superior Court was allowed by said Court on the 13th day of March 1952.

On the 9th day of June 1952, the appellant filed its assignments of error claiming error in the record, judgment, proceedings and decisions of said Court on questions of law arising in the trial as may appear in the certified transcript of record on file in this Court, and said appeal came to this Court at its term holden on the first Tuesday of October 1952, when the parties appeared and thence by continuance to the present term.

This Court, having heard the parties, finds that in the record, judgment, proceedings and decisions of said Court there is no error.

It is therefore considered and adjudged that said judgment of said Superior Court be and the same is hereby affirmed and that the City of New Britain recover of the defendant the United States of America his costs taxed at ------ dollars and ------ cents.

By the Court:

RAYMOND G. CALNEN,
Clerk.

Judgment entered December 30th 1952.

[Clerk's certificate to foregoing transcript omitted in printing.]

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27 Supreme Court of the United States

No. ____, October Term, 1952

[Title omitted.]

Order extending time to file petition for writ of certiorari

Upon consideration of the application of counsel for petitioner,
It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including May 29, 1953.

ROBERT H. JACKSON,
Associate Justice of the Supreme Court of the United States.

Dated this 11th day of March 1953.

U. S. GOVERNMENT PRINTING OFFICE: 1953

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SUPREME COURT OF THE UNITED STATES

No. 92, OCTOBER TERM, 1953

UNITED STATES OF AMERICA, PETITIONER

vs.

CITY OF NEW BRITAIN, CONNECTICUT, ET AL.

Order allowing certiorari. Filed October 12, 1953

The petition herein for a writ of certiorari to the Supreme Court of Errors of the State of Connecticut is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

The Chief Justice took no part in the consideration or decision of this application.

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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 830

UNITED STATES OF AMERICA, PETITIONER

v.

CITY OF NEW BRITAIN, CONNECTICUT, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

The Acting Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Errors of Connecticut entered December 30, 1952, affirming the judgment of the Superior Court of Connecticut entered December 18, 1951.

OPINIONS BELOW

The memorandum opinion of the Superior Court of Connecticut for Hartford County (R. 8) is not reported. The opinion of the Supreme Court of Errors of Connecticut (R. 17–23) is reported at 94 A. 2d 10.

JURISDICTION

The judgment of the Supreme Court of Errors of Connecticut was entered December 30, 1952. (R. 23.) On March 11, 1953, Mr. Justice Jack-

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son extended the time for filing a petition for a writ of certiorari to and including May 29, 1953 (R. 24). The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257 (3).

This suit (originating as a mortgage foreclosure proceeding) arises out of conflicting tax claims of the United States and the City of New Britain, Connecticut, against the proceeds derived from the sale of the mortgaged property which remained after the satisfaction of the mortgages and other prior claims. In the trial court (the Superior Court for Hartford County, Connecticut), the United States asserted that its liens under Sections 3670–3672 of the Internal Revenue Code gave it a right to the fund which was paramount to the tax and water rent liens asserted by the City under the Connecticut statute (R. 16). That court held that the City's liens were superior to those of the United States, and that the City was entitled to have its taxes and water rents paid out of the fund before the United States might participate (R. 10–16). On appeal to the Supreme Court of Errors of Connecticut, the United States again asserted the superiority of its liens under Sections 3670–3672 of the Internal Revenue Code (R. 16). That court held that the liens of the City were paramount to those of the United States, also specifically rejecting the contention of the United States as to Sections 3670–3672 (R. 21–23).

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QUESTIONS PRESENTED

1. Whether the lien for unpaid taxes accorded the United States by Section 3670 of the Internal Revenue Code "upon all property * * * belonging to [a delinquent taxpayer]" is superior to a municipal tax lien where the property to which the liens attach still belongs to the taxpayer when the federal lien arises.

2. Whether the federal tax lien is rendered subordinate to a municipal tax lien merely because the state law makes the municipal lien superior to a mortgage, which Section 3672 of the Internal Revenue Code excepts from the validity of an unrecorded federal tax lien.

STATUTES INVOLVED

The pertinent portions of the statutes involved are set forth in the Appendix, *infra,* pp. 20–22.

STATEMENT

This case involves the relative superiority of the tax liens of the United States and those of the City of New Britain, Connecticut, upon property of a delinquent taxpayer, General Laundry Service, Inc. The property was sold in connection with the foreclosure of two mortgages, and the proceeds of the sale after satisfaction of the mortgages and other prior claims were insufficient to satisfy both the state and federal tax liens.

The foreclosure action was instituted in the Superior Court for Hartford County, Connecti-

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cut, by Louis Brown, as mortgagee, against General Laundry Service, Inc., the taxpayer-mortgagor, and others, including the United States and the City of New Britain, Connecticut, who claimed an interest in the mortgaged property. The action resulted in a judgment of foreclosure and sale of the property. (R. 5–6.) The proceeds of the sale plus rents collected by a receiver of rents amounted to $28,071.24, and the expenses of the sale amounted to $1,761.09. By supplemental judgment ratifying the sale, the Superior Court found that the property and the net proceeds of the sale were subject to tax liens of the City totaling $3,587.71; mortgage liens in the amount of $15.319.35; a judgment lien in the amount of $2,017.18; and tax liens of the United States totaling $8,475.13 (R. 9–11).

The tax liens of the United States are for withholding taxes for periods from 1947 to 1950, the assessment lists of which had been received by the Collector on various dates between April 26, 1948, and September 21, 1950; federal insurance contributions for periods from 1949 to 1950, the assessment lists of which had been received by the Collector on various dates between June 20, 1949, and September 21, 1950; and federal unemployment tax for the year 1948, the assessment list of which had been received by the Collector on July 26, 1950. The United States demanded payment of these taxes, totaling $8,475.13, but payment was not made. Notice of federal tax lien in that

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amount was then filed in the office of the Town Clerk of New Britain and in the office of the Clerk of the United States District Court in New Haven, on March 19, 1951. (R. 15–16.)

The tax liens of the City are for real estate taxes for 1947 to 1951 which became due at various dates between October 1, 1947, and 1951; and for water rents which became due at various dates between December 1, 1947, and June 1, 1951 (R. 14–15).

The United States conceded that its liens were subordinate to the mortgages and the claim of the judgment creditor,[1] but contended that they were paramount to the liens of the City. The Superior Court of Connecticut ruled that the net proceeds of the sale were distributable to the respective lienors in the following order: the City, the mortgagee, the judgment creditor, and the United States. This left a balance of only $5,385.91 available for payment to the United States on account of its tax liens totaling $8,475.13. (R. 10–11, 16.) The court held that the City's liens took precedence over the United States tax

[1] The mortgagee and judgment creditor fall within the provisions of Section 3672 of the Internal Revenue Code, *infra*, pp. 20–21, which excepts from the validity of the federal tax lien a "mortgagee, pledgee, purchaser, or judgment creditor" whose interest is acquired before notice of the federal lien is filed. Thus, the controversy concerns solely the relative superiority of the federal and municipal tax liens in relation to the surplus proceeds of the foreclosure sale (R. 14).

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liens on the ground that they were "created by the State of Connecticut and represent an attribute of sovereignty," and that Congress had not provided for priority of federal tax liens (R. 8). On appeal by the United States, the Supreme Court of Errors affirmed, holding that the liens accorded the United States for its taxes by the federal lien statute (Sections 3670–3672 of the Internal Revenue Code) were inferior to those accorded the City for its taxes by the Connecticut statute (R. 17–23).

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that under Section 3670 of the Internal Revenue Code the relative superiority of tax liens of the United States and liens of the City depends upon the time when the respective liens arose.

2. In holding that those tax liens of the City which arose before the federal tax liens came into existence were sufficiently perfected to divest the taxpayer of property to which the federal liens, when they arose, would have otherwise attached.

3. In holding that the tax liens of the City, including those which arose after the federal tax liens had arisen, fell within the exception to the validity of the federal lien enacted by Congress in Section 3672 of the Internal Revenue Code in favor of mortgage and judgment liens, merely because the Connecticut statute grants municipal

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tax liens superiority over mortgage and judgment liens.

4. In holding that each of the City's liens was paramount to each of the tax liens of the United States.

REASONS FOR GRANTING THE WRIT

Section 3670 of the Internal Revenue Code, *infra,* p. 20, provides that a federal tax which is not paid becomes a lien "upon all property and rights to property, whether real or personal, belonging to such person." Section 3672 of the Code, *infra,* pp. 20–21, provides that this lien "shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed."

In reaching its conclusion that the municipal tax liens were superior to the federal tax liens under these Code provisions, the court below followed two unsound theories. First, it held that Congress in enacting Section 3670 did not give federal liens priority over municipal tax liens unless the federal lien is prior in time (R. 21).[2] Secondly, the court held that in view of Section 3672 of the Internal Revenue Code, *infra,* pp. 20–21, which excepts from the validity of the federal lien until it is recorded, mortgagees, pledgees,

[2] The federal tax liens are fourteen in number and arose on various dates between 1948 and 1950 (R. 16), while the municipal liens are nineteen in number and arose on various dates between 1947 and 1951 (R. 15). Some of the federal liens antedated some of the municipal liens, and *vice versa.*

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purchasers, and judgment creditors, Congress did not accord priority to the federal lien even if it arises prior to the municipal liens, if by state statute the municipal liens take precedence over mortgagees, judgment creditors, etc. (R. 22).

If the construction placed by the court below on Section 3670 stands, municipal tax liens which are prior in time will be paramount to federal tax liens, despite the fact that, as here, the property is still owned by and in the possession of the taxpayer when the federal lien arises. And if its construction of Section 3672 is followed, the application of the federal law will depend upon whether the state declares that its liens shall have supremacy over mortgages, pledges, purchases, and judgments. Thus, in any case where claims in any of those categories exist, any state may subordinate the federal lien to its own, regardless of the fact that its lien is not perfected, by enacting a statute making its tax or other liens paramount to claims of the character that Section 3672 excepts from the validity of the federal lien until it is recorded. Under that principle, the federal lien statute, instead of being applied uniformly among the several states, as this Court has held it should be, will be subject to varied applications, and may be avoided in those states which apply state statutory devices for making state tax liens superior to federal tax liens. It is clear that the questions presented by the rulings below are im-

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portant and recurring in the administration of the federal tax law.

1. (a) In so far as the decision below rests upon the theory that the relative superiority of the federal tax lien and an adverse state statutory lien depends upon the time the respective liens arose, it fails to give full effect to the federal lien statute. In the exercise of its constitutional authority to lay and collect taxes, Congress has, in enacting Section 3670 of the Internal Revenue Code, *infra*, p. 20, vested in the United States a lien for unpaid taxes "upon all property and rights to property, whether real or personal, belonging to [a delinquent taxpayer]." "Stronger language could hardly have been selected to reveal a purpose to assure the collection of taxes." *Glass City Bank* v. *United States*, 326 U. S. 265, 267. See also *United States* v. *Security Tr. & Sav. Bk.*, 340 U. S. 47; *United States* v. *Snyder*, 149 U. S. 210; *Detroit Bank* v. *United States*, 317 U. S. 329; *Michigan* v. *United States*, 317 U. S. 338. In Section 3671 of the Internal Revenue Code, *infra*, p. 20, Congress further provided that the lien arises when the assessment list is received by the Collector and "shall continue" until the tax liability is satisfied or becomes unenforceable by lapse of time. The two sections, read together, reveal a "plain intent" that the federal lien, when it arises, is to attach to all property belonging to the taxpayer—not only to property "owned

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when the lien arose," but even to property thereafter acquired at any time during the life of the lien. *Glass City Bank* v. *United States, supra,* at p. 267.

Except as Congress itself has provided otherwise, the federal tax lien is paramount to all others and may not be impaired or superseded by state law or judicial decision. *United States* v. *Gilbert Associates,* 345 U. S. 361; *United States* v. *Security Tr. & Sav. Bk., supra; United States* v. *Snyder, supra; Michigan* v. *United States, supra.* See also *MacKenzie* v. *United States,* 109 F. 2d 540, 542 (C. A. 9); *United States* v. *Reese,* 131 F. 2d 466, 469 (C. A. 7); *Investment & Securities Co.* v. *United States,* 140 F. 2d 894, 896 (C. A. 9); *Miller* v. *Bank of America, N. T. & S. A.,* 166 F. 2d 415, 417 (C. A. 9). The only exceptions that Congress has seen fit to make are those specifically enumerated in Section 3672 of the Internal Revenue Code. That section provides that the federal lien "shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector" in one of the designated recording offices. Thus, an adverse lien holder, in order to prevail over the federal lien, must satisfy two conditions—he must acquire one of the classes of interests enumerated in Section 3672, and he must acquire that interest before the federal lien is recorded. In the *Security Tr. & Sav. Bk.* case, *supra,* this Court held that the federal tax lien

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was paramount to a creditor's attachment lien obtained under state law, notwithstanding that the attachment lien arose prior to the federal lien and later ripened into a judgment lien, because the attachment lien had not yet become a "judgment" lien when the federal lien was recorded. See also *United States* v. *Gilbert Associates, supra.* Nothing in the language of the federal lien statute or its legislative history[3] lends any support to the view, propounded by the court below, that adverse liens which do not fall within any of the enumerated exceptions are nonetheless to be accorded an exception merely because they arise before the federal lien comes into existence.[4]

[3] When the federal tax lien statute was originally enacted in 1866 it made no exception whatever in favor of any third party. In *United States* v. *Snyder*, 149 U. S. 210, decided under this statute, it was held that the federal lien prevailed even as against a bona fide purchaser for value, regardless of the protection afforded the purchaser by state law. This decision led to an amendment in 1913, now contained in Section 3672 of the Internal Revenue Code, to the effect that the federal lien is not to be valid against a mortgagee, purchaser, or judgment creditor, unless notice of the lien had been filed. In 1939, the statute was again amended so as to include a pledgee among those protected against an unrecorded federal tax lien. The history of the federal lien statute led Mr. Justice Jackson in his concurring opinion in the *Security Tr.* case to conclude (pp. 52–53) that the only interests which are superior to the federal tax lien are those specifically mentioned in Section 3672 "and no others." See also *United States* v. *Gilbert Associates, supra; MacKenzie* v. *United States*, 109 F. 2d 540, 542 (C. A. 9).

[4] See, however, *United States* v. *Canadian American Co., Inc.*, 108 F. Supp. 206 (E. D. N. Y.), affirmed, *per curiam*, 202 F. 2d 751 (C. A. 2), wherein the United States District

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Certainly, Congress was aware that adverse liens, including local tax liens, might be outstanding against the property of a taxpayer at the time federal taxes were assessed. It nevertheless directed in Sections 3670 and 3671 that the federal lien shall extend to "property * * * belonging to" the taxpayer at the time the assessment list is received by the Collector, while in Section 3672 it carved out a limited class of interests "as against" which an unrecorded federal lien "shall not be valid." One who becomes a mortgagee, pledgee, purchaser, or judgment creditor before notice of the federal lien is filed comes within the exceptions, even though he acquires such interest after the federal lien arises. Conversely, since state or municipal tax liens do not fall within any of these exceptions, they are subordinate to the federal lien even though they may have arisen first. The court below has read into the federal statute a new category of exceptions, *i. e.,* statutory liens held by a state which are outstanding when the federal lien arises. Whether such additional exceptions should be created is, we submit, a matter for Congress, not for the courts. *Glass City Bank* v. *United States, supra; United States* v. *Gilbert Associates, supra;* cf. *Illinois* v. *Campbell,* 329 U. S. 362, 376.

Court held that county tax liens which were prior in time were paramount to a federal tax lien arising under Section 3670 of the Internal Revenue Code.

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(b) That part of the decision below which is predicated on the hypothesis that some of the municipal liens had been "perfected" before the federal liens arose, is not only incompatible with other portions of the court's opinion which characterize the municipal liens as "inchoate" (R. 20, 21–22), but is contrary to this Court's pronouncements of what constitutes a perfected adverse lien. In the *Security Tr. & Sav. Bk.* case, *supra,* the Court, in rejecting the claimed superiority of a creditor's attachment lien over a subsequently arising federal tax lien (p. 51), assimilated the effect of an adverse lien in relation to the federal lien statute to the effect of such a lien in relation to the federal priority statute (R. S. 3466). The Court there held that an unperfected adverse lien (other than one excepted by Code Section 3672) no more suffices to defeat the federal tax lien impressed by Code Section 3670 upon all property belonging to the taxpayer when the federal lien arises, than it does to defeat the priority accorded federal claims by R. S. 3466, which priority attaches to the property of an insolvent debtor when he makes a general assignment for the benefit of creditors or commits an act of bankruptcy.[5] To be "per-

[5] The federal lien and priority statutes supplement each other, and their common purpose is to insure the prompt and certain collection of the federal revenue. *United States* v. *Security Tr. & Sav. Bk., supra,* at p. 51. The lien statute applies whether or not the taxpayer is insolvent and even though the taxpayer is divested of the property after the

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fected," an adverse lien must have been enforced at least to the point of divesting the taxpayer of either title or possession. *United States* v. *Gilbert Associates, supra; Illinois* v. *Campbell, supra,* at pp. 375–376; *United States* v. *Waddill Co.,* 323 U. S. 353, 357–360; *United States* v. *Texas,* 314 U. S. 480, 488; *New York* v. *Maclay,* 288 U. S. 290, 294; *Spokane County* v. *United States,* 279 U. S. 80, 95. In cases involving application of the priority statute "it has never been held sufficient to defeat the federal priority merely to show a lien effective to protect the lienor against others than the Government, but contingent upon taking subsequent steps for en-

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federal lien arises, while the priority statute comes into play only if the taxpayer is insolvent and with respect to property owned at the time of insolvency. The claim of the United States may be paramount to an adverse lien under one statute, or the other, or (as in the *Gilbert* case) both. For example, one who acquires a judgment lien or becomes a purchaser after the federal lien is recorded does not come within the exceptions specified in Section 3672, and the federal lien will continue to attach to the property even after the taxpayer has been divested of it by a sale in execution of the judgment and whether or not the taxpayer is insolvent (*United States* v. *Snyder, supra*); in such case, the federal claim is protected by the lien statute and not the priority statute. On the other hand, one who acquires a judgment lien before the federal lien is recorded does come within the exceptions of Section 3672, but if the taxpayer becomes insolvent before the judgment lien is "perfected" to the point of divesting the taxpayer of the property, the federal claim will nevertheless prevail by virtue of the priority statute (*Thelusson* v. *Smith*, 2 Wheat. 396); in such case, the federal claim is protected by the priority rather than the lien statute.

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forcing it", and "a similar rule" applies in cases involving application of the federal lien statute. *United States* v. *Security Tr. & Sav. Bk., supra,* at p. 51.

No claim is or can be made here that the City had divested the taxpayer of any interest in the property in question before the federal liens arose.[6] The City's lien "did not of its own force divest the taxpayer of either title or possession" (*United States* v. *Texas, supra,* at p. 488), and the "mere attachment" of the lien was not tantamount to perfection of it (*United States* v. *Gilbert Associates, supra,* at p. 366). Like any other unperfected lien, the City's lien represented a mere power to divest the taxpayer of the property subject to the lien. Until the power was exercised the property remained "property * * * belonging to [the taxpayer]," within the meaning of Section 3670 of the Internal Revenue Code, to which the federal liens attached when they arose. In holding that the liens created by the Connecticut statute in favor of its municipalities were sufficiently "perfected" to defeat those created by the federal statute in favor of the United States, solely by virtue of the fact that they antedated the federal liens, the court below vio-

[6] Section 1853 of the Connecticut General Statutes, *infra,* p. 22, provides that during its existence the municipal tax lien "may be enforced by levy and sale" of the taxpayer's interest in the property. See also Section 758, *infra,* pp. 21–22, applicable to water liens. Admittedly, no such action was taken here.

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lated the "cardinal principle" that the federal lien statute is to be applied with nationwide "uniformity". *United States* v. *Gilbert Associates, supra,* at p. 364.[7]

2. To the extent that the decision below rests on the theory that the municipal liens (regardless of when they arose) are paramount to the federal liens because the Connecticut statute makes them superior to mortgage and judgment liens, it is in conflict with the holdings of this Court that the federal lien may not be displaced by state legislation. To be sure, the federal statute excepts from the validity of the federal lien mortgagees and judgment creditors whose liens arise before the federal lien is recorded. But it hardly follows, as the court below assumed, that by granting such exceptions Congress intended also to except any adverse lien which a State elects to make superior to mortgage or judgment liens.[8] The only excep-

[7] Moreover, under the reasoning of the court below, the State may fix a date for the creation of its liens anterior even to the time its taxes are assessed and become due. Thus, Section 1853 of the Connecticut General Statutes provides that the tax lien of a municipality "shall exist from the first day of October or other assessment date of the municipality in the year previous to that in which such tax, or the first installment thereof, shall have become due." In regarding some of the municipal liens as having arisen before the federal liens, the court below stated (R. 21–22) that "Though inchoate, they attached on the first day of October in the year preceding that in which the taxes became due."

[8] The court erroneously assumed (R. 22) that if the federal liens should be given a rank ahead of the municipal liens, then either the municipal liens would have to be subordinated

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tions to the federal lien supremacy are those which Congress itself has "specifically" enumerated "and no others" (*United States* v. *Security Tr. & Sav. Bk., supra,* at p. 53, concurring opinion), and these exceptions may not be expanded by the states (*United States* v. *Gilbert Associates, supra*). For "the purpose of its own internal administration" (*United States* v. *Gilbert Associates, supra,* at p. 363), a state is free to rank it own claims ahead of any others; but the hierarchy prescribed by state law for local purposes cannot deprive the Government of "property * * * belonging to" the delinquent taxpayer which Congress in Section 3670 has commanded must be applied in satisfaction of federal taxes. By subordinating its tax liens to mortgage and judgment liens in Section 3672 the Government has not thereby subordinated itself to other liens which Connecticut places ahead of mortgage and judgment liens. To permit the state to superimpose its own or other adverse liens upon the

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to the mortgage in violation of the state statute or the mortgage would have to be subordinated to the federal liens in violation of the federal statute. These are not the exclusive alternatives. As this Court seems to have agreed in *Spokane County* v. *United States*, 279 U. S. 80, 91, the relative priorities could have been maintained without violating either statute, "by setting apart sufficient funds to pay the mortgage before paying the federal taxes and then providing for payment of the state tax out of the sum so set apart." If an anomalous result is produced by applying the sum set apart for the mortgage in satisfaction of the municipal liens, it stems from application of the state and not the federal statute.

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limited exceptions carved out by Congress would (*United States* v. *Snyder, supra, at* p. 214) place the collection of the federal revenue "at the mercy of state legislation." Under the rationale of the decision below, the states would be at liberty to preempt the paramount taxing power of the United States simply by ascribing to their own tax liens superiority over those which Congress has singled out for protection in Section 3672. Congress did not thus abdicate its supreme authority to decide what adverse interests should prevail over the federal tax lien. Had it intended to except state and municipal tax liens from the validity of the federal lien, in addition to the interests enumerated in Section 3672, it undoubtedly would have said so.[9] On this point, the

[9] The error of the court below is emphasized by its supposition (R. 22) that *if* the mortgagee had paid the City's tax claims and had added their amount to his mortgage claim, as permitted by the State statute, the superiority accorded the mortgage lien under Section 3672 would have extended to the City's liens. A tax lien is not transformed into a mortgage lien, for purposes of applying the exception provisions of the federal statute, merely because under the state statute it is assignable to a mortgagee who satisfies it. But even assuming, *arguendo*, that a tax lien could thus be converted into a mortgage lien within the meaning of the federal statute, the transformation would occur only if and when the tax was paid by the mortgagee; and since even a mortgage lien is not protected against the federal lien unless it was acquired before the federal lien was recorded, the mortgagee's payment of the tax after the recording of the federal lien could not by "relation back" (*United States* v. *Security Tr. & Sav. Bk.*, *supra*, at p. 50) be treated as having retroactively created an additional mortgage lien as of a prior date. In

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decision below is directly in conflict with decisions of other state courts in *Samms* v. *Chicago Title & Trust Co.*, 111 N. E. 2d 172 (Ill. App.); and *Hopkins* v. *Eureka Coal Co.*, decided February 25, 1944 (1944 C. C. H., par. 9320) (Circuit Court, W. Va.).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

ROBERT L. STERN,
Acting Solicitor General.

MAY 1953.

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any event, since the mortgagee concededly never paid the municipal taxes, the observations of the court below regarding the effect of such a payment on the relative superiority of the municipal and federal tax liens are academic.

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APPENDIX

Internal Revenue Code:

SEC. 3670. PROPERTY SUBJECT TO LIEN.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. (26 U. S. C. 1946 ed., Sec. 3670.)

SEC. 3671. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time. (26 U. S. C. 1946 ed., Sec. 3671.)

SEC. 3672 [As amended by Section 401, Revenue Act of 1939, c. 247, 53 Stat. 862, and Section 505, Revenue Act of 1942, c. 619, 56 Stat. 798]. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a) *Invalidity of Lien Without Notice.*— Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) *Under State or Territorial Laws.*— In the office in which the filing of such notice is authorized by the law of the State or Territory in which the property subject

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to the lien is situated, whenever the State or Territory has by law authorized the filing of such notice in an office within the State or Territory; or

(2) *With Clerk of District Court.*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law authorized the filing of such notice in an office within the State or Territory; or

(3) *With Clerk of District Court of the United States for the District of Columbia.*—In the office of the clerk of the District Court of the United States for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

* * * * *

(26 U. S. C. 1946 ed., Sec. 3672.)

General Statutes of Connecticut (1949 Rev.):

SEC. 758. *Rates for use.*—The legislative body shall establish just and equitable rates or charges for the use of the waterworks system authorized herein, to be paid by the owner of each lot or building which is connected with and uses such system and may change such rates or charges from time to time. * * * Such rates or charges, if not paid when due, shall constitute a lien upon the premises served and a charge against the owners thereof, which lien and charge shall bear interest at the same rate as would unpaid taxes. Such lien shall take precedence over all other liens or incumbrances except taxes and may be foreclosed against the lot or building served in the same manner as a lien for taxes. The amount of any such rate or charge which

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remains due and unpaid for thirty days may, with reasonable attorneys' fees, be recovered by the legislative body in a civil action in the name of the municipality against such owners. * * *

SEC. 1853. *Tax liens; precedence; enforcement.*—The interest of each person in each item of real estate, which shall have been legally set in his assessment list, shall be subject to a lien for that part of his taxes laid upon the valuation of such interest, as found in such list when finally completed, as such part may be increased by interest, fees and charges. Such lien, unless otherwise specially provided by law, shall exist from the first day of October or other assessment date of the municipality in the year previous to that in which such tax, or the first installment thereof, shall have become due until one year after such tax or first installment thereof shall have become due, and, during its existence, shall take precedence of all transfers and incumbrances, in any manner affecting such interest in such item, or any part of it. Such lien, during its existence, may be enforced by levy and sale of such real estate in the event that such person shall have complete title thereto or of his interest in such real estate in the event that he shall not have complete title thereto. No sale of real estate for taxes or foreclosure of any tax lien shall divest the estate sold of any existing lien for other taxes.

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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 92

UNITED STATES OF AMERICA, PETITIONER

v.

CITY OF NEW BRITAIN, CONNECTICUT, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The memorandum opinion of the Superior Court of Connecticut for Hartford County (R. 8) is not reported. The opinion of the Supreme Court of Errors of Connecticut (R. 17-23) is reported at 139 Conn. 363.

JURISDICTION

The judgment of the Supreme Court of Errors of Connecticut was entered on December 30, 1952. (R. 23.) On March 11, 1953, Mr. Justice Jackson extended the time for filing a petition for a writ

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of certiorari to and including May 29, 1953. (R. 24.) The petition for a writ of certiorari was filed on May 26, 1953, and was granted on October 12, 1953. (R. 25.) The jurisdiction of this Court is conferred by 28 U.S.C. Section 1257(3).

QUESTIONS PRESENTED

1. Whether tax liens accorded the United States by the federal tax lien statute (Sections 3670-3672 of the Internal Revenue Code) are rendered subordinate to those accorded a municipality by a state statute, merely because the state statute places the municipal liens ahead of those which the federal statute excepts from the validity of the federal lien.

2. Whether those of the municipal liens which by state statute arose before the federal liens are, solely by reason of that fact, paramount to the federal liens.

STATUTES INVOLVED

The pertinent statutory provisions are set forth in the Appendix, *infra,* pp. 30-33.

STATEMENT

This case involves the relative superiority of tax liens of the United States and those of the City of New Britain, Connecticut, upon property of a delinquent taxpayer, General Laundry Service, Inc. The property was sold in connection with the foreclosure of two mortgages, and the proceeds of the sale after satisfaction of the mortgages and other prior claims were insufficient to satisfy both the municipal and the federal tax liens.

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The foreclosure action was instituted in the Superior Court for Hartford County, Connecticut, by Louis Brown, as mortgagee, against General Laundry Service, Inc., the taxpayer-mortgagor, and others, including the United States and the City of New Britain, Connecticut, who claimed an interest in the mortgaged property. (R. 1-4.) The action resulted in a judgment of foreclosure and sale of the property. (R. 5-6.) The proceeds of the sale plus rents collected by a receiver of rents amounted to $28,071.24, and the expenses of the sale amounted to $1,761.09. By supplemental judgment ratifying the sale, the Superior Court found that the property and the net proceeds of the sale were subject to tax liens of the City totaling $3,587.71; mortgage liens in the amount of $15,319.35; a judgment lien in the amount of $2,017.18; and tax liens of the United States totaling $8,475.13. (R. 9-11.)

The tax liens of the United States are for withholding taxes for periods from 1947 to 1950, the assessment lists of which had been received by the Collector on various dates between April 26, 1948, and September 21, 1950; federal insurance contributions for periods from 1949 to 1950, the assessment lists of which had been received by the Collector on various dates between June 20, 1949, and September 21, 1950; and federal unemployment tax for the year 1948, the assessment list of which had been received by the Collector on July 26, 1950. The United States demanded payment of these taxes, totaling $8,475.13, but payment was not made. Notice of federal tax liens in that amount

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was then filed in the office of the Town Clerk of New Britain and in the office of the Clerk of the United States District Court in New Haven, on March 19, 1951. (R. 15-16.)

The tax liens of the City are for real estate taxes for 1947 to 1951 which became due at various dates between October 1, 1947, and 1951; and for water rents which became due at various dates between December 1, 1947, and June 1, 1951. (R. 14-15.)

The United States conceded that its liens were subordinate to the mortgages and the claim of the judgment creditor,[1] but contended that they were paramount to the liens of the City. The Superior Court of Connecticut ruled that the net proceeds of the sale were distributable to the respective lienors in the following order: The City, the mortgagee, the judgment creditor, and the United States. This left a balance of only $5,385.91 available for payment to the United States on account of its tax liens totaling $8,475.13. (R. 10-11, 16.) The court held that the City's liens took precedence over the United States tax liens on the ground that they were "created by the State of Connecticut and represent an attribute of sovereignty," and that Congress had not provided for priority of federal tax liens. (R. 8.) On appeal by the United States,

[1] The mortgagee and judgment creditor fall within the provisions of Section 3672 of the Internal Revenue Code, which excepts from the validity of the federal tax lien a "mortgagee, pledgee, purchaser, or judgment creditor" whose interest is acquired before notice of the federal lien is filed. Thus, the controversy concerns solely the relative superiority of the federal and municipal tax liens in relation to the surplus proceeds of the foreclosure sale. (R. 14.)

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the Supreme Court of Errors affirmed, holding that the liens accorded the United States for its taxes by the federal lien statute (Sections 3670-3672 of the Internal Revenue Code) were inferior to those accorded the City for its taxes by the Connecticut statute. (R. 17-23.)

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that the liens of the City, including those which arose after the federal tax liens had arisen, fell within the exception to the validity of the federal lien enacted by Congress in Section 3672 of the Internal Revenue Code in favor of mortgage and judgment liens, merely because the Connecticut statute grants the municipal liens superiority over mortgage and judgment liens.

2. In holding that each of the City's liens was paramount to each of the tax liens of the United States.

3. In holding that under Section 3670 of the Internal Revenue Code the relative superiority of tax liens of the United States and liens of the City depends upon the time when the respective liens arose.

4. In holding that those liens of the City which arose before the federal tax liens came into existence were sufficiently perfected to divest the taxpayer of property to which the federal liens, when they arose, would otherwise have attached.

5. In affirming the judgment of the Superior Court.

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SUMMARY OF ARGUMENT

Sections 3670 and 3671 of the Internal Revenue Code vest in the United States a lien for unpaid taxes upon "all property * * * belonging to" a delinquent taxpayer, arising when the assessment list is received by the Collector. Section 3672 provides that the lien "shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed * * *." The court below held that, since the municipal liens involved here are made superior under Connecticut law to mortgages and judgment liens—which the federal statute excepts from the validity of an unrecorded federal tax lien—the municipal liens are paramount to the federal liens. Alternatively, it held, on the principle of "first in time, first in right," that the municipal liens which arose before the federal liens were, by virtue of that fact, entitled to priority of payment. Both holdings, we submit, are erroneous.

I

Both logic and authority are violated by the theory that the municipal liens, simply because they are superior under Connecticut law to mortgages and judgment liens, may displace federal liens, which, under federal law, are invalid before recordation as against mortgages and judgment liens. What is decisive here is that the controlling federal law accords no such precedence to the municipal liens over the federal liens.

The exceptions to the paramount validity of the federal lien are only those enumerated in Section

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3672 of the Internal Revenue Code, and the list may not be enlarged by state law. *United States* v. *Security Trust & Savings Bank,* 340 U.S. 47; *United States* v. *Gilbert Associates,* 345 U.S. 361. This conclusion is compelled, not only by the language of the federal lien provisions, but by their history. As first enacted in 1866, they admitted of no exceptions. *United States* v. *Snyder,* 149 U.S. 210. The exceptions since created have been specific and limited. Because the respondent City's liens are not among these exceptions, they may not be read in on the ground that they are superior, under state law, to others Congress included. Any other conclusion would leave the federal statute to be varied by each state, expanding the exceptions to include those declared by state law to take precedence over the interests Congress saw fit to protect in Section 3672. Settled principles, applied in squarely controlling decisions of this Court, preclude such a result. *United States* v. *Gilbert Associates, supra; Michigan* v. *United States,* 317 U.S. 338, 340.

The State's order of precedence may be accepted without improper subordination of the federal lien, by setting aside funds sufficient to pay the interests preferred by Section 3672 and allowing the City to satisfy its liens from that sum. See *Spokane County* v. *United States,* 279 U. S. 80, 91.

II

The holding below that the federal tax lien must take its place in line, like any ordinary private lien (and unlike the City liens involved here),

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under the "first in time, first in right" formula, is contrary to *United States* v. *Security Trust & Savings Bank,* 340 U.S. 47. There, an attachment lien arose prior to the federal lien and was later "merged" (in terms of the state law) in a judgment obtained after the federal lien was recorded. This Court held, first, that the judgment could not "relate back" to the attachment and thereby bring the latter within Section 3672, which covers judgment liens. Second, and directly applicable here, the Court held that, though first in time, the attachment lien was second in right to the federal tax lien. Assimilating the tax lien statute to the federal priority provision in R.S. 3466, the Court held that "a lien effective to protect the lienor against others than the Government, but contingent upon taking subsequent steps for enforcing it" (340 U.S. at 51) could not defeat the paramount federal lien.

There is nothing in the tax lien provisions to warrant a distinction between the attachment lien in *Security Trust* and the municipal liens involved here. *United States* v. *Gilbert Associates,* 345 U.S. 361, dealt with municipal liens like the ones here in every material respect. Although they were at least as "perfected" as the respondent's, those liens were held insufficiently perfected to defeat the federal priority under R.S. 3466. Since under the *Security Trust* decision, "a similar rule must prevail here" (340 U.S. at 51), the fact that the City's liens were declared by Connecticut law to "arise" first cannot justify their supersedure of the federal liens.

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ARGUMENT

Section 3670 of the Internal Revenue Code (Appendix, *infra,* p. 30) provides that unpaid federal taxes "shall be a lien in favor of the United States upon all property * * * belonging to" the delinquent taxpayer. Under Section 3671 (Appendix, *infra,* p. 30) the lien ordinarily arises when the assessment list is received by the Collector, and it continues until the tax liability is paid or becomes unenforceable by the lapse of time. Section 3672 (Appendix, *infra,* pp. 30-31) provides that the lien "shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector" in a designated recording office.

The question in this case is whether liens for federal taxes arising under the above statutory provisions are paramount to those accorded the City of New Britain for its taxes and water rates by the laws of Connecticut.[2] The federal liens are fourteen in number and arose on various dates between 1948 and 1950, while the municipal liens are nineteen in number and arose on various dates between

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[2] The municipal liens are created by Sections 758 (water rates) and 1853 (taxes) of the General Statutes of Connecticut (1949 Rev.) (Appendix, *infra,* pp. 31-33). Section ~~1843~~ 1853 provides that the tax liens "shall take precedence of all transfers and incumbrances." Section 758 provides that the water liens "shall take precedence over all other liens or incumbrances except taxes"—the word "taxes" referring, under the authoritative construction of the court below, only to "those taxes which may be assessed in favor of the state or some subdivision thereof and which, under the law, are secured by specific liens upon real property" (R. 18). Accordingly, both types of liens are on an equal footing for purposes of the present controversy, and there is no need to consider them separately.

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1947 and 1951 (R. 15-16). Thus, some of the federal liens antedated some of the municipal liens, and *vice versa*. The property subject to the liens was sold in connection with the foreclosure of two mortgages, and the net proceeds of the foreclosure sale, after satisfaction of the mortgages and a judgment claim,[3] were insufficient to satisfy both the federal and the municipal liens. The United States and the City each contends that its tax liens are superior to those of the other.

The court below, affirming the Connecticut Superior Court (R. 10-11), has held that all of the City's liens must be paid before any of the federal liens, including the City liens arising after, as well as the ones arising before, those of the United States. This result followed, the court reasoned, because (1) the federal liens, under Section 3672 of the Internal Revenue Code, are subordinate to mortgages and judgment liens arising before notice of the federal liens is filed; (2) the City's liens are, under the Connecticut law, superior to mortgages, judgments, and other incumbrances, regardless of when they arise; so that (3) the City's liens, though not covered by any exception in the federal statutes, must be superior to the federal liens which Congress has subordinated to mortgages and judgments. (R. 22.) If correct, this holding, which is the only one discussed in the brief opposing certi-

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[3] Notice of the federal tax liens was recorded on March 19, 1951 (R. 15), subsequent to the time the mortgage and judgment claims arose (R. 17), and the United States accordingly conceded below that those claims fall within the exceptions contained in Code Section 3672 (R. 14, 18).

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orari, would dispose of the entire case. In the first point of our argument, we propose to show that this holding is erroneous.

As to those of the City's liens which antedate the federal liens, the court below also held that these were entitled to priority on "[t]he principle ordinarily applicable to the determination of priority of incumbrances, namely, first in order of time, first in right" (R. 21). Our second point demonstrates that this ruling, opposed to controlling decisions of this Court, is also incorrect.

I

The Municipal Liens Are Not Rendered Superior to the Federal Liens Merely Because the State Law Places Them Ahead of Liens to Which the Federal Law Grants Superiority

The very statement of the holding below on this issue (*supra,* p. 10) goes far, in our view, to refute it. It is true, of course, that the federal tax lien, before recordation, is invalid *under federal law* against mortgages and judgment liens. It is equally undisputed that the City's liens are superior to the same mortgages and judgment liens *under Connecticut law.* But cf. footnote 12, *infra,* pp. 26-27. But it does not follow at all that the City's liens, whether arising earlier or later than the federal liens, must be paramount to the latter. On the contrary, the decisive point is that the federal law, admittedly controlling, accords no such paramountcy to the City's liens. There is nothing in the federal law to permit these municipal liens to ride the shoulders of private liens which Congress

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has chosen to protect—and which the State, for its own purposes, may of course subordinate—and thereby achieve a superiority which Congress has not chosen to grant. Settled principles defining the scope and effect of the federal tax lien preclude the result reached below.[4]

The establishment by Congress of a lien for federal taxes is an exercise of its constitutional authority to lay and collect taxes, and the laws of Congress enacted pursuant to that authority are by the Constitution declared to be the supreme law of the land. Constitution of the United States, Art. I, Sec. 8; Art. VI; *United States* v. *Snyder*, 149 U.S. 210; *Michigan* v. *United States*, 317 U.S. 338; cf. *Spokane County* v. *United States*, 279 U.S. 80. In Section 3670 of the Internal Revenue Code, Congress has vested in the United States a lien for unpaid taxes "upon all property and rights to property, whether real or personal, belonging to" the tax debtor. The purpose of this provision is "to insure prompt and certain collection of taxes due the United States from tax delinquents * * *."

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[4] Directly contrary to the decision below are *Samms* v. *Chicago Title & Trust Co.*, 111 N.E. 2d 172 (Ill. App.); *Hopkins* v. *Eureka Coal Co.* (1944 C.C.H. Fed. Tax Reporter, Par. 9320, Circ. Ct. W. Va., Feb. 25, 1944); *Sunlight Metal Products* v. *McClure, et al.*, C.A. No. 3497, D. Colo., March 24, 1952 (unreported). On the other hand, *Ferris* v. *Chic-Mint Gum Co.*, 14 Del. Ch. 232, upon which the court below relied (R. 22), was said at the time to be limited to its peculiar facts (14 Del. Ch. at 240) and has been so limited and in effect discarded by the court which rendered it. *In re Mitchell's Restaurant, Inc.*, 31 Del. Ch. 121. *Board of Supervisors* v. *Hart*, 210 La. 78, also cited below (R. 22), was relied upon by the California court which was reversed in *United States* v. *Security Trust & Savings Bank*, 340 U.S. 47, and is contrary to the latter decision.

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United States v. *Security Trust & Savings Bank*, 340 U.S. 47, 51. "Stronger language could hardly have been selected to reveal" that purpose. *Glass City Bank* v. *United States*, 326 U.S. 265, 267.

Except as Congress has provided otherwise, the tax lien accorded the United States by Section 3670 is paramount to state-created liens. And the only exceptions Congress has seen fit to allow are those explicitly set forth in Section 3672, which provides that the federal lien is invalid "as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed" in an appropriate office. The exceptions are confined to those enumerated in Section 3672, "and no others." *United States* v. *Security Trust & Savings Bank*, 340 U.S. 47, 53 (concurring opinion of Mr. Justice Jackson). They may not be expanded by the states. *United States* v. *Gilbert Associates*, 345 U.S. 361.

This conclusion, clear enough from recent decisions of this Court, is settled beyond doubt by the history of the exceptions in Section 3672. Present Sections 3670-3672 of the Internal Revenue Code were derived from Section 3186 of the Revised Statutes, as amended by the Act of March 4, 1913, c. 166, 37 Stat. 1016; Section 3186 in turn was derived from the Act of July 13, 1866, c. 184, 14 Stat. 98, 107, Sec. 9. As originally enacted in 1866, it contained no provision for priority of any interest over the federal tax lien. Accordingly, in *United States* v. *Snyder*, 149 U.S. 210, it was held that the lien prevailed even as against a bona fide

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purchaser for value without notice or knowledge of the existence of the lien, despite state rules protecting purchasers from such secret, unrecorded interests. Thereafter, the amendment of March 4, 1913, *supra*, provided that the federal lien should "not be valid as against any mortgagee, purchaser, or judgment creditor until notice of such lien shall be filed by the collector".[5] Again, after a decision in 1938, *United States* v. *Rosenfield*, 26 F. Supp. 433 (E. D. Mich.), held the federal lien effective after filing against a bona fide purchaser of securities who had no notice or knowledge of the lien, the statute was amended to protect pledgees generally against unrecorded liens and to protect against even a recorded lien "any mortgagee, pledgee, or purchaser, [of securities], for an adequate and full consideration in money or money's worth, * * * without notice or knowledge of the existence of such lien." Section 401 of the Revenue Act of 1939, c. 247, 53 Stat. 862.

It was this history of specific, sparing, *ad hoc* exceptions which led Mr. Justice Jackson to point

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[5] See H. Rep. No. 1018, 62d Cong., 2d Sess., p. 1; S. Rep. No. 1315, 62d Cong., 3d Sess., p. 1. The House report, citing the *Snyder* case, stated (p. 2) that

> the lien is so comprehensive that it covers all the property and rights to property of the delinquent situated anywhere in the United States, and any person taking title to real estate is subjected to the impossible task of ascertaining whether any person, who has at any time owned the real estate in question, has been delinquent in the payment of the taxes referred to while the owner of the real estate in question. The business carried on under the internal-revenue law may be at a great distance from the property affected by this secret lien, but this will not relieve the property from the lien.

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out that Section 3672 excludes from the paramount coverage of the federal lien "those types of interests which it specifically included in the statute and no others." *Security Trust, supra,* at 53 (concurring opinion). See, also, *United States* v. *Gilbert Associates, supra; MacKenzie* v. *United States,* 109 F. 2d 540 (C.A. 9); *Samms* v. *Chicago Title & Trust Co.,* 111 N. E. 2d 172 (Ill. App.). Against this background, the error of the court below becomes clear.

As the parties stipulated (R. 12), the controversy here "is between the city of New Britain and the United States of America as to which is entitled to priority in the distribution of the proceeds." Looking at these disputants alone, it is plain that the State, whether by statute or judicial decision, lacks power to grant to the City's liens a priority Congress has withheld. *Michigan* v. *United States,* 317 U.S. 338, 340. But this, in a word, is precisely what the decision below accomplishes by indirection. If such a result were permitted, then any interest a state declares superior to any of those Congress has protected would be added by state law to the exceptions specified in Section 3672. The result would, of course, destroy the uniformity sought in the federal tax scheme, leaving the scope of the federal statute to vary with state law.[6] But the more direct answer to the de-

[6] "A cardinal principle of Congress in its tax scheme is uniformity, as far as may be." *United States* v. *Gilbert Associates, supra,* at 364. See, also, *Burnet* v. *Harmel,* 287 U.S. 103, 110; *Lyeth* v. *Hoey,* 305 U.S. 188, 194; *United States* v. *Pelzer,* 312 U.S. 399, 402-403; *Helvering* v. *Stuart,* 317 U.S. 154, 161.

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cision below is simply that the municipal liens involved here are nowhere included in Section 3672, and neither the language nor the history of that Section supplies the remotest justification for reading them in.

Nor is there justification in the court's reasoning (R. 22) that "if priority were accorded to the Federal liens over those of the municipality, the result would have to be that either the rank of the municipal liens would be reduced below that of the mortgages and judgment lien, which would be in violation of the State law, or the position of the Federal liens would be moved up to a place ahead of the mortgages and judgment lien, in violation of § 3672." The kind of logically insoluble circularity the court sought to avoid may arise, of course, even where various liens governed by the law of a single jurisdiction compete with each other. See, *e.g.*, *Hoag* v. *Sayre*, 33 N. J. Eq. 552; 3 Glenn, *Mortgages*, §375.[7] The controlling point remains that the problem may not be avoided by misreading the federal statute to subordinate the federal lien. Congress has given no indication that in such circumstances it is the federal lien which is to fall behind; on the contrary, the breadth and reach of the federal lien (*supra*, pp. 12-15) make it the dominant interest.

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[7] The example considered in the cited sources involves an unrecorded mortgage which is superior to a later mortgage where the later mortgagee has actual notice, but inferior to an intervening judgment which is in turn superior to the second mortgage.

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But we note that the simple alternatives posed by the court below are not in fact exclusive. Full effect would be given to the federal statute by setting aside funds sufficient to pay the mortgages and judgment (covered by Section 3672) before satisfying the federal liens. Connecticut could then satisfy the municipal liens (excluded from Section 3672) from the sum so set apart. This procedure, suggested by the Government and referred to by this Court in *Spokane County* v. *United States*, 279 U.S. 80, 91—and adopted in *Samms* v. *Chicago Title & Trust Co.*, 111 N. E. 2d 172 (Ill. App.)—is the only one by which both the federal and the state law are given effect to the fullest permissible extent. If the end result be deemed incongruous in that the State takes from mortgagee and judgment creditor part or all of what the Federal Government leaves with them, the "incongruity arises by virtue of [the] state law and not by virtue of the federal enactment." *Samms* v. *Chicago Title & Trust Co., supra,* at 176. The State is free, of course, to subordinate the liens of its municipality in situations of this kind and rank them last on the ground that they fall behind the federal liens which yield in turn to the mortgages and judgment. The State is not free, however, unless Congress grants a further exception thus far withheld, to protect its City's liens at the expense of the paramount federal liens.

We turn, finally, to the suggestion in the opinion below (R. 22) that, since a mortgagee *could have* paid the City's tax charges and added their amount

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to his claims, the superiority accorded a mortgage should be extended to the City's liens. There is no ground for the assumption that a municipal tax lien, because it would have been assignable to a mortgagee who satisfied it, is therefore transformed into a mortgage lien within Section 3672. But even assuming the possibility of such a transformation in some circumstances, it could only occur if and when the tax was paid by the mortgagee; and since even a mortgage lien is not protected against the federal lien under Section 3672 unless it was acquired before the federal lien was recorded, the mortgagee's payment of the tax after the recording of the federal lien could not by "relation back" (*United States* v. *Security Trust & Savings Bank, supra,* at 50) be treated as having retroactively created an additional mortgage lien as of a prior date. Cf. 3 Glenn, *Mortgages,* pp. 1553-54.

It will be time enough to consider the position of a mortgagee subrogated to a lien prior to his, under state law, when the facts of a particular case present the problem. The undisputed fact here is that neither mortgagee ever paid off any of the City's liens. See *Samms* v. *Chicago Title & Trust Co., supra,* at 176. In the hands of the City, at least, they remain what they are—City liens for taxes and water charges, nowhere excepted by Section 3672 and accordingly subordinate to the federal liens.

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II

Those of the Municipal Liens Which Arose Before the Federal Liens Are Not for That Reason Superior

A. *The relative superiority of the federal tax lien and an adverse lien does not depend on when they respectively arose*

The court below held alternatively (R. 21-22) that those of the respondent City's liens which arose before the federal liens are entitled, because they were earlier in time, to be paid first. The court pointed out (R. 18-19) that the City's liens "would take precedence over any other incumbrance on the property, irrespective of the time at which that incumbrance might have attached." It concluded, however, that the federal lien, far from enjoying any comparable precedence, is subject to "[t]he principle ordinarily applicable to the determination of priority of incumbrances, namely, first in order of time, first in right" (R. 21). We think this conclusion is refuted by the recent decision of this Court in *United States* v. *Security Trust & Savings Bank,* 340 U.S. 47, as well as by the nature and incidence of the federal lien.

In the *Security Trust* case, the contest was between the United States asserting the type of tax lien involved here, and a party who had procured an attachment lien, subsequently merged in a judgment, against the property in controversy. The attachment lien had arisen before receipt of the pertinent assessment lists gave rise to the federal lien, and, of course, before recordation of the latter.

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The attaching creditor did not obtain judgment, however, until after the federal lien notices had been filed.[8]

In its decision which was subsequently reversed by this Court, the California District Court of Appeal held the federal tax lien subordinate to the attachment lien. *Winther* v. *Morrison,* 93 Cal. App. 2d 608. The court said, summarizing the effects of the pertinent California law (p. 611):

> * * * Since it is conceded that the attachment herein was properly issued and properly levied upon the property, it is evident that Morrison perfected a lien thereon which secured and insured the payment to him of any judgment that was recovered by him in the action, insofar as the property attached could be applied to the judgment. * * * The lien attached immediately upon the levy of the attachment.

Rejecting the Government's contention (p. 612) that the attachment lien was "not sufficiently specific or perfected to prevent a subsequent federal tax lien from attaching to the property with priority," the court declared (p. 613):

> The liens created by sections 3670 and 3671 of the Internal Revenue Code are general and

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[8] The attachment in question was levied on October 17, 1946. The federal assessment lists were received in November and December, 1946, and notices of federal liens were recorded in December, 1946. The judgment of the attaching creditor was rendered on April 24, 1947. Transcript of Record, Nos. 10-13, October Term, 1950, p. 20; and see *Winther* v. *Morrison*, 93 Cal. App. 2d 608, 610.

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> not priority liens. * * * There is no provision in either section indicating that the liens for taxes have a priority over attachment liens placed on the property prior to the time when the tax liens arise.

Building upon this premise, the court concluded, finally, that (p. 615):

> Whatever rights the [taxpayer] had in the real property involved were subject to the valid subsisting attachment lien of Morrison and the tax lien of the United States was not entitled to priority over it.[9]

The reasoning and decision of the California court, precisely duplicated in the holding of the court below that the principle of "first in order of time, first in right" applies to the federal tax lien, were rejected by this Court. Holding that the attachment lien was not specific and perfected, and that it could not become so from its inception by relation back of the judgment obtained after the federal lien was recorded, this Court concluded (340 U. S. at 51):

> In cases involving a kindred matter, *i.e.*, the federal priority under R. S. § 3466, it

[9] In the course of its decision, the California court distinguished *MacKenzie* v. *United States*, 109 F. 2d 540 (C.A. 9), where the federal tax lien was held superior to an attachment lien which arose later, but before notice of the federal lien had been filed. The court said (93 Cal. App. 2d at 613):

> Since the tax lien [in *MacKenzie*] arose prior to the issuance of the attachment it was not necessary to the decision to pass upon the priorities of tax and attachment liens where the tax lien, as here, arose after the levy of the attachment.

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> has never been held sufficient to defeat the federal priority merely to show a lien effective to protect the lienor against others than the Government, but contingent upon taking subsequent steps for enforcing it. *Illinois* v. *Campbell,* [329 U. S. 362,] 374. If the purpose of the federal tax lien statute to insure prompt and certain collection of taxes due the United States from tax delinquents is to be fulfilled, a similar rule must prevail here. Accordingly, we hold that the tax liens of the United States are superior to the inchoate attachment of Morrison * * *.

That holding is squarely applicable here. Like the California attachment lien, the City liens involved here, lacking the perfection which alone might make a difference (see *infra,* pp. 25-28), are subordinate to the federal tax lien. For the *Security Trust* case leaves no doubt that Section 3670, when it extends the federal lien to all property and rights to property "belonging to" the taxpayer, means what it says. It makes clear that, since the mere existence of an earlier lien in no way divests the taxpayer of his property (*Conard* v. *Atlantic Insurance Co.,* 1 Pet. 386, 444), such a lien cannot prevent the effective attachment of the federal lien to property which "belongs" to the taxpayer.

There is, in short, nothing in the federal statute to warrant subjection of the federal lien to the "first in time, first in right" doctrine. Before Congress wrote an express exception to cover them, even innocent purchasers for value, universally

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protected by the states against secret liens on real property, could claim no superiority over an unrecorded federal lien. *United States* v. *Snyder,* 149 U. S. 210. The general doctrine applied by the states against private lienors, conferring priority on a lien according to when it arises, is no more effective against the federal lien, unless Congress says so, than are the states' rules regarding notice. Nor do the exceptions Congress has allowed, conceding superiority to specified interests without regard to when they arise, provide any basis for application of state law priorities based on time. The City liens involved here are no different in this respect from the attachment lien in *Security Trust.* Insofar as their claimed superiority rests upon the bare fact that state law created them before the federal liens, the claim is identical with that in *Security Trust*—and equally groundless under the controlling federal law.

Indeed, this conclusion applies with special propriety to the kind of tax lien the respondent City asserts. Unlike the attachment lien in *Security Trust,* which presumably competed on an equal "first in time" basis with other private liens, the City's liens are placed ahead of all other liens regardless of when they arise. Section 1853, General Statutes of Connecticut (1949 Rev.), Appendix, *infra,* pp. 32-33. This rule of superiority for state tax liens is commonly found in state statutes.[10]

[10] See *Osterberg* v. *Union Trust Co.,* 93 U. S. 424; *Hefner* v. *Northwestern Life Ins. Co.,* 123 U. S. 747, 751; *Baltimore Shipbuilding Co.* v. *Baltimore,* 195 U. S. 375, 381; *Burfiend* v. *Hamilton,* 20 Mont. 343; *California Loan Etc. Co.* v. *Weis,* 118 Cal.

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Moreover, a similar precedence has been accorded state tax liens even where the state statute contains no explicit command to this effect. Thus, in *N. Y. Terminal Co.* v. *Gaus,* 204 N. Y. 512, the state statute, similar to Section 3670, provided merely that the state franchise tax should be a lien on all real and personal property until paid in full. Yet the lien was held paramount to that of a prior mortgage. See, also, *State of Minnesota* v. *Central Trust Co.,* 94 Fed. 244 (C.A. 8), certiorari denied, 174 U. S. 803; *Eaton's Appeal,* 83 Pa. St. 152, 154.

The lien Congress fashioned, apart from the express exceptions which are inapplicable here, is no less effective. The states may, as Connecticut has, impose liens on their taxpayers, superior to earlier private liens, even before any taxes are owing. They may not, however, as the *Security Trust* decision establishes, subordinate the federal lien to their own by a mere showing that theirs is prior in time. Congress wrote no such rule. It is as relevant here as in our earlier argument (see pp. 13-15, *supra*) that the exceptions to the paramountcy of the federal lien are those Congress allowed "and no others," and that, these exceptions aside, the federal lien covers "all property * * * belonging to" the taxpayer.

489; *Minneapolis Thresh. Mach. Co.* v. *Roberts County,* 34 S. D. 498; *Union Cent. Life Ins. Co.* v. *Black,* 67 Utah 268; *Hibernia Mortgage Co.* v. *Greco,* 191 La. 658; *Licking* v. *Hays Lumber Co.,* 146 Neb. 240.

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B. *None of the City's liens was perfected before the federal liens arose*

Definitively assimilating the federal tax lien statute to the federal priority statute (R. S. 3466) in determining the effect of an adverse lien (*cf. Michigan* v. *United States,* 317 U. S. 338, 340-341), the *Security Trust* decision leaves open only the possibility that a specific and perfected state-created lien which is prior in time might take precedence over the federal lien. [11] But this possibility is of no help to the respondent because, as we shall show, its liens are not "specific and perfected." It bears mention in this connection that the court below, in applying to the federal lien the "first in time, first in right" formula, proceeded on the erroneous assumption that "§ 3466 is fundamentally different from §§ 3670-3672" in this respect (R. 21). It found in Sections 3670-3672 "no provision for the priority of Federal liens over antedating liens in favor of others even though the latter may be inchoate and general." *Ibid.* So reasoning, the court had no need to determine

[11] The Court has repeatedly posed, but found it unnecessary to decide, the question whether a specific and fully perfected adverse lien can defeat the Government's priority under R. S. 3466. *United States* v. *Gilbert Associates,* 345 U. S. 361, 365; *Illinois* v. *Campbell,* 329 U. S. 362, 370; *United States* v. *Waddill Co.,* 323 U. S. 353, 355-356; *New York* v. *Maclay,* 288 U. S. 290, 294; *United States* v. *Texas,* 314 U. S. 480, 485-486; *Spokane County* v. *United States,* 279 U. S. 80, 95. Since, as we show below, the City's liens in this case were plainly not "perfected" within the meaning that term acquires from the foregoing decisions, there is no occasion to reach in the present context the still open question. Compare the Brief for the United States in *Gilbert Associates,* pp. 45-47.

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whether the City had the kind of perfected liens which alone might take precedence over the federal claim.

The court did, however, characterize the City's liens as "both perfected and specific" (R. 20).[12]

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[12] Section 1853 of the Connecticut Statutes provides that the municipal lien "shall exist from the first day of October or other assessment date of the municipality in the year previous to that in which such tax, or the first installment thereof, shall have become due * * *." Considering the impact in another context of this lien which antedates any obligation of the taxpayer-licnee, the court below has said (*Merchants Bank & Trust Co.* v. *Pettison*, 112 Conn. 652, 656-657):

> * * * By our present law a tax becomes a lien upon the real estate from the date of its assessment "in the year previous to that in which said taxes become due and until one year after such taxes become due." * * * Where, as in the city of Hartford, if property was assessed July 1st, 1929, the tax became due July 1st, 1930, and the lien would begin on the first-mentioned date, and continue to July 1st, 1931. Even if taxes were paid the very day they became due, there would still be the tax assessed that same day for the ensuing year, and that also would be a first charge upon the property. * * * Since the due date of taxes in Hartford is the date of assessment of taxes for the ensuing year, all Hartford real estate is constantly subject to a "first charge" for taxes. Not only would it now be impossible to make first mortgage loans on real estate, in the sense of a "first charge" upon the property, but if there were in fact such a first mortgage, outstanding when a tax was laid, it would at once become a second and not a first charge and its character as a first mortgage in that sense, destroyed.

Accordingly, the court held that the existence of the municipal liens would not prevent application of a statute providing that where a judgment creditor foreclosing a judgment lien "holds a mortgage upon real estate in this State as security for the debt * * * that has gone into the judgment, which mortgage is a first charge upon the property mortgaged, the court shall, upon the motion of the judgment debtor or any later incumbrancer on the property covered by the judgment lien, order such mortgaged property to be first applied to the debt secured by it * * *." The decision makes clear, not only how far from "perfected" the City's liens are, but that even the "procedure"

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And, to meet that characterization squarely, we think it readily demonstrable that it cannot be accepted in order to subordinate the federal tax lien.

To be fully "perfected" in the sense which is relevant here, a lien must effect a "transfer of title or possession" (*United States* v. *Waddill Co.*, 323 U. S. 353, 360), and a lienor who "has acquired neither title nor possession" does not possess a sufficiently perfected lien to defeat the federal priority under R. S. 3466. *Illinois* v. *Campbell*, 329 U. S. 362, 376. The *Security Trust* case holds that "a similar rule must prevail here." 340 U. S. at 51.

Applying this "similar rule," it is plain that the City's lien fail to meet the test. No claim is or can be made that the City had divested the taxpayer of the property "by reducing it to possession" (*United States* v. *Gilbert Associates*, 345 U. S. 361, 366) before the federal liens arose.[*] In

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with which the state statute endows them must yield to the specific policy of another state statute. Compare Point I of this brief, *supra*, pp. 13-19. It yields a *fortiori* to the federal law.

[*] Section 1655 of the Connecticut General Statutes (Appendix, *infra*, p. 32) provides that during its existence the municipal tax lien "may be enforced by levy and sale" of the taxpayer's interest in the property. The same action is authorized under Section 798 of the Connecticut Statutes (Appendix, *infra*, p. 32) on liens for water charges. Similar provisions appeared in the New Hampshire statutes involved in *Gilbert Associates* (Revised Laws of New Hampshire (1942), c. 80, §§ 17, 18, 22, 23), and were not effective to endow the Town lien in that case specific and perfected. The decisive point there, as here, was that the Town never took possession of the property. See 345 U. S. at 366. And see p. 28, *infra*.

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every material respect, then, the City liens here are the same as the Town lien which was held insufficient in the *Gilbert Associates* case. The statement of this Court's holding there, substituting the word "City" for "Town," is precisely applicable here (345 U. S. at 366):

> * * * There is no ground for the contention here that the [City] had perfected its lien by reducing the property to possession. The record reveals no such action. The mere attachment of the [City's] lien before the recording of the federal lien does not * * * give the [City] priority over the United States. The taxpayer had not been divested by the [City] of either title or possession. The [City], therefore, had only a general, unperfected lien.

It may be noted, in fact, that the Town in the *Gilbert Associates* case had, at least superficially, a stronger claim that its lien was perfected than that of the City here. For there, the Town had twice exercised its power to sell the property in question at a tax sale whereas the City in this case has taken no comparable action. What is decisive, however, in both cases is that the property remained "property * * * belonging to" the taxpayer to which the federal liens attached when they arose. Because this is so, the municipal liens in both cases are insufficient to supersede the paramount claims of the United States.

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CONCLUSION

For the foregoing reasons, the judgment below should be reversed.

Respectfully submitted.

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NOVEMBER, 1953.

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APPENDIX

Internal Revenue Code:

SEC. 3670. PROPERTY SUBJECT TO LIEN.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

(26 U. S. C. 1946 ed., Sec. 3670.)

SEC. 3671. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.

(26 U. S. C. 1946 ed., Sec. 3671.)

SEC. 3672 [As amended by Section 401, Revenue Act of 1939, c. 247, 53 Stat. 862, and Section 505, Revenue Act of 1942, c. 619, 56 Stat. 798]. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS

(a) *Invalidity of Lien Without Notice.*— Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment

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creditor until notice thereof has been filed by the collector—

(1) *Under State or Territorial Laws.*—In the office in which the filing of such notice is authorized by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law authorized the filing of such notice in an office within the State or Territory; or

(2) *With Clerk of District Court.*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law authorized the filing of such notice in an office within the State or Territory; or

(3) *With Clerk of District Court of the United States for the District of Columbia.*—In the office of the clerk of the District Court of the United States for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

* * * * *

(26 U. S. C. 1946 ed., Sec. 3672.)

General Statutes of Connecticut (1949 Rev.):

SEC. 758. *Rates for use.*—The legislative body shall establish just and equitable rates or charges for the use of the waterworks system authorized herein, to be paid by the owner of each lot or building which is connected with and uses such system and may change such rates or charges from time to time. * * *

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Such rates or charges, if not paid when due, shall constitute a lien upon the premises served and a charge against the owners thereof, which lien and charge shall bear interest at the same rate as would unpaid taxes. Such lien shall take precedence over all other liens or incumbrances except taxes and may be foreclosed against the lot or building served in the same manner as a lien for taxes. The amount of any such rate or charge which remains due and unpaid for thirty days may, with reasonable attorneys' fees, be recovered by the legislative body in a civil action in the name of the municipality against such owners. * * *

SEC. 1853. *Tax liens; precedence; enforcement.*—The interest of each person in each item of real estate, which shall have been legally set in his assessment list, shall be subject to a lien for that part of his taxes laid upon the valuation of such interest, as found in such list when finally completed, as such part may be increased by interest, fees and charges. Such lien, unless otherwise specially provided by law, shall exist from the first day of October or other assessment date of the municipality in the year previous to that in which such tax, or the first installment thereof, shall have become due until one year after such tax or first installment thereof shall have become due, and, during its existence, shall take precedence of all transfers and incumbrances, in any manner affecting such interest in such item, or any part of it. Such lien, during its existence, may be enforced by levy and sale of such real estate in the event that such person shall have com-

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plete title thereto or of his interest in such real estate in the event that he shall not have complete title thereto. No sale of real estate for taxes or foreclosure of any tax lien shall divest the estate sold of any existing lien for other taxes.

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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 92

UNITED STATES OF AMERICA, PETITIONER

v.

CITY OF NEW BRITAIN, CONNECTICUT, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

REPLY BRIEF FOR THE UNITED STATES

At the close of the argument of this case on December 1, 1953, the Court gave respondent leave to file a supplemental brief. Because there will be no opportunity to deal orally with the arguments advanced in the supplemental brief, this brief in reply is respectfully submitted.

I

THE FORTUITOUS PRESENCE IN THIS CASE OF MORTGAGE AND JUDGMENT CLAIMS CANNOT DIMINISH THE SUPERIORITY UNDER CONTROLLING FEDERAL LAW OF THE FEDERAL LIEN OVER THE MUNICIPAL LIEN

A. *The circuity problem respondent poses cannot justify the decision below*

Respondent argues (Supp. Br. T2, T4–6) that "Even if *arguendo* it should be conceded that the

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federal liens would supersede the City's liens in a contest not involving encumbrances prior to the federal liens, the presence of such encumbrances here creates a logically insoluble circuity of priority" unless the City's liens are paid ahead of the federal liens. We believe, on the other hand, that the parties correctly framed the issue when they stipulated (R. 12) that the "present controversy is between the city of New Britain and the United States of America as to which is entitled to priority in the distribution of the proceeds." It seems clear to us that the resolution of this controversy will determine the relative priorities in similar controversies whether or not mortgagees or judgment creditors are present. The dispositive point in any case is that the federal lien *vis-à-vis* the City lien is paramount under the federal law which, it is agreed, is controlling.

The "circuity" and the "illogicality" respondent discerns in our position stems from a failure to remember at critical junctures that two bodies of law, federal and state, are involved here, and that the federal law is superior—a critical point which is necessarily conceded, but sometimes overlooked, by respondent. Thus, respondent's statement of our position requires the italicized additions we insert in brackets in order to formulate adequately the terms of the legal problem. As thus amended, the summary of our stand at page T5 of respondent's supplemental brief reads:

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> The government does not challenge the priority [*under Connecticut law*] of *A* [the City's liens] over *B* [mortgages and judgment lien], and concedes the priority [*under federal law*] of *B* over *C* [federal liens] * * *. It contends nevertheless that *C* is paramount [*under federal law*] to *A* * * *.

Omitting the crucial matter we have inserted in italics, respondent concludes (*ibid.*) that "Insofar as logic affords a guide to solution of the problem presented, the result reached below would seem to be irrefutable."

But this is faulty logic indeed. If *A* is prior to *B under state law* and *B* is prior to *C under federal law,* these premises afford no logical ground for concluding that *A* is prior to *C under federal law.* Our point is, simply, that the undisputed premises provide no clue, in point of logic, to the relationship between *A* and *C* under federal law. For that relationship, one must look, not to a supposed logic which reaches a supposedly "irrefutable" solution through the elementary fallacy of shifting the terms of its premises, but to the command of the federal statute. And that command, to which we turn, leaves no ground for the municipal supremacy respondent asserts.[1]

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[1] Respondent objects to a "circuity of priority" in which it finds "a logically insoluble problem" (Supp. Br. T5–6, N1–2). It goes on to illustrate the logical and aesthetic objections to circuity by reference to scholarly discussions which exist precisely because, under a single body of state

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B. *The language, the legislative history, and this Court's construction of 26 U. S. C. 3672 preclude reading into this provision a grant of priority to municipal liens*

It bears emphasis that on respondent's major theory (the theory that, because they prime other encumbrances under Connecticut law, the municipal liens should be regarded as included in 26 U. S. C. 3672, though the precise and specific terms of this provision admittedly omit such liens) the federal liens would be subordinated to municipal liens which arose later. On its face, then, the theory confronts the clear and settled principle "that a tax lien imposed by a law of Congress * * * cannot, without the consent of Congress, be displaced by later liens imposed by authority of any state law or judicial decision."

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law, such circuity arises. Several brief observations seem pertinent to this problem: (1) If circuities exist even under the law of a single state, it is not surprising that they may arise in cases requiring application of both state and federal law. (2) Granting respondent's conclusion that "there can be no ineluctable correct result" (Supp. Br. T6) for a circuity problem under state law alone, it does not follow that the problem here should or may be exorcised by giving the municipal liens a superiority over federal liens for which there is no justification in the statutes Congress wrote. (3) If avoidance of circuity is the state's overriding goal, it may be achieved by paying mortgages and judgments first, federal liens second, and municipal liens third, on the ground that the latter, like the host of other liens not mentioned in 26 U. S. C. 3672, cannot supersede the federal liens and should not, therefore, supersede liens which are granted priority by Section 3672. (4) Finally, the state court may adopt the solution mentioned in *Spokane County* v. *United States*, 279 U. S. 80, 91, and discussed at p. 17 of our main brief.

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Michigan v. *United States,* 317 U. S. 338, 340. Respondent urges, however (Supp. Br. T6–9), that "Congress must be taken to have intended" that 26 U. S. C. 3672 should be read as if it mentioned municipal liens like those involved here. We submit, to the contrary, that there are decisive reasons in this case against holding that Congress must be taken to have said what it left unsaid.

1. As we have shown in our main brief (pp. 13–15), the history of the federal lien provisions, in the context of this Court's decisions, argues powerfully against making additions to the plain and limited terms of 26 U. S. C. 3672 based on state lien law. We do not question respondent's point (Supp. Br. T7) that the kind of municipal tax involved here "is generally secured in this country by a lien" which is superior, under state law, to other encumbrances.[2] But this fact cannot justify treatment of such liens as if they were included in, though they are omitted from, 26 U. S. C. 3672.

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[2] It should be observed that the respondent City's claims include liens for water rents as well as real property taxes. Respondent, urging the special status of the latter, makes arguments which would appear to be inapplicable to the water rent liens. Accordingly, while we think the claims fail as to both sets of liens, we note that success for the respondent based on the general character of real estate tax liens should not necessarily govern the problem of the water liens.

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If, as respondent conjectures, Congressmen automatically thought of the preferred place under state laws of real estate liens—and if Congress had reason to add such liens to the four protected interests included in Section 3672—the simplest and most obvious course would have been to say so. The fact is, however, that on respondent's own analysis of Section 3672 as a "notice-filing provision" (Supp. Br. T11), there was no reason for granting to state tax liens a protection comparable to that which Congress deemed fair as to mortgagees and purchasers. See pp. 7–10, *infra*. So there is here much more than the ordinary question whether law should be fashioned from Congressional silence. There is here the fatal objection that the law respondent would fashion is in no sense a mere extension or elaboration of the purposes Congress actually expressed.

When Congress first created the federal lien, with no exceptions, it was no less pertinent to argue, as respondent does now (Supp. Br. T7), that the members of Congress knew what men of affairs ordinarily know. Congress must have known, then, of the protection universally accorded an innocent purchaser against secret liens. Yet, *United States* v. *Snyder*, 149 U. S. 210, denied such protection against the secret federal lien, refusing to read the federal statute as if it tacitly adopted state law limitations, however universal and beneficent.

Congress remedied this situation, narrowly and specifically, in what is now 26 U. S. C. 3672, pro-

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tecting, in addition to purchasers, judgment creditors and two other classes. Early this year, this Court considered whether municipal liens substantially similar to the ones in this case (see our main brief, pp. 27–28) could be included as "judgments" in Section 3672. And the Court held that, however much "in the nature of a judgment" the action of the state taxing authorities might be under state law, only a judgment creditor "in the usual, conventional sense" could qualify for inclusion in Section 3672. *United States* v. *Gilbert Associates,* 345 U. S. 361, 364–365.

So, although respondent is under state law very like a "judgment creditor"—a class specifically named in Section 3672—it cannot prevail under Section 3672 through this characterization. We think a fair reading of the pertinent materials—statutory language, history, and decisions—leaves even less ground for importing respondent's liens into Section 3672 as a new, wholly unmentioned class which Congress "must be" guessed to have considered.

2. In 26 U. S. C. 3672, Congress undertook to protect against the federal lien four classes of interests which are acquired in reliance upon lack of notice of prior claims. The respondent City, which neither relies upon the absence of prior claims in acquiring its lien nor defers to subsequent claimants who have no notice of its lien, cannot claim to fall within the classes with which Congress was concerned in enacting Section 3672.

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As respondent points out (Supp. Br. T11), and as the House Report respondent cites makes clear beyond doubt (H. Rep. No. 1018, 62d Cong., 2d Sess., *passim.*), the provision which is now 26 U. S. C. 3672 was designed to require *notice* of the federal lien as a condition to its validity against the specified classes of interests for which Congress deemed such notice fair and desirable. Thus, describing the situation under the federal lien statute prior to the added notice provision, the House Report (No. 1018, *supra*) on this provision said (p. 1):

> A person proposing to buy the property of another could protect himself against such a lien only by ascertaining from all the collectors in the United States whether or not the vendor was delinquent in the payment of taxes. This would be a great hardship and would make it practically impossible for any person proposing to buy property to secure himself against such liens. The same hardship would devolve upon mortgagees and judgment creditors.[3]

[3] The Report went on (p. 2) to describe the amendment as providing "a very simple means of giving this notice that would not at all be burdensome upon the Government." It described the existing federal lien as a "secret lien" and expressed the subsequently vindicated belief that the states would "readily pass legislation authorizing the filing of notice in the office of the registrar or recorder of deeds, in order to protect [their] citizens in business transactions against liens which the citizens can not know of except at great cost of money and time." *Ibid.*

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When the plain and single role of Section 3672 as a notice-filing provision is considered, no basis is left for the argument by conjecture that "Congress must be taken to have intended" (silently) that municipal liens like respondent's would be read into the Section. The interpolation could not be justified in terms of the purpose of Section 3672. These municipal liens arise, automatically and even before municipal taxes are due, without regard to whether prior interests exist. There is no reliance by the City even remotely comparable to the reliance of a mortgagee or purchaser which renders notice necessary and desirable.

The incongruity of respondent's position is, here again, a result of intermingling state and federal law without regard to the separate purposes and status of each. The City claims priority over mortgagees, under state law, without regard to notice or to the time when the mortgages arise. The federal statute protects the mortgagee before notice. After notice, the mortgagee is subordinate to the federal lien. But the City claims superiority over the federal lien in this case because the mortgagee and judgment creditor acquired their interests before notice of the federal lien—though such notice is irrelevant as between municipal and federal liens on the one hand, and as between municipal liens and mortgagee and judgment creditor on the other.

What of the municipal lien in a case where there is a mortgage subordinate to the federal

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lien because the mortgagee had notice of the latter? And where does the municipal lien stand in a case where there is no mortgage or other interest named in Section 3672? Neither the statute nor respondent's argument supplies a basis for concluding that in such cases the municipal lien would be superior to the federal liens. The reason, we submit, is that the municipal lien, on its own hook, has no place in the notice-filing scheme of Section 3672.

3. Of interest under this point, finally, is the fact that the rule respondent would fashion for Connecticut does not apply in the District of Columbia. The District lien for real property taxes, at least where it arises after the federal tax lien, is subordinate to the latter. *Cobb* v. *United States*, 172 F. 2d 277 (C. A. D. C.).

Thus, despite respondent's supposition that Congress must be deemed tacitly to have conferred an overriding supremacy on municipal tax liens, the only concrete evidence is strikingly to the contrary. For when Congress itself created a lien like respondent's, it attributed to it no such preferred status as respondent claims.[4]

[4] The distinction respondent proposes between Connecticut and the District of Columbia points to a general infirmity in respondent's position: That position would leave the operation of the federal lien to turn upon the attributes of municipal liens under varying state laws. While statutes like Connecticut's are common, a number of states provide that municipal real property tax liens like the respondent's shall be effective against all private persons, but not against the

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II

THE MUNICIPAL LIENS WHICH AROSE BEFORE THE FEDERAL LIENS ARE NOT ENTITLED TO PRIOR PAYMENT

In its original brief (at p. 5), apparently conceding the controlling force of *United States* v. *Security Trust & Savings Bank*, 340 U. S. 47, respondent flatly denied that "Congress intended what the United States Supreme Court assumes." In oral argument, counsel for respondent announced that *Security Trust* had been "distinguished to death," and respondent's supplemental brief (p. T10) undertakes to distinguish it from this case. To prevail, we think, respondent must persuade the Court to overrule the unanimous decision in *Security Trust*. For the distinctions it proposes are without substance.

1. The first attempted distinction is in the fact that *Security Trust* "did not involve three or

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state or county. See, *e. g.*, Iowa Code Anno., § 445.28; Miss. Code. Anno., vol. 7A, § 9744; *City of Opp* v. *Brogden*, 236 Ala. 180. In such states, under respondent's view, two results are possible: (1) The municipal lien could be held superior to the federal lien, though inferior to the state or county lien, surely an anomalous ranking of governments. (2) The municipal lien could be held inferior to the federal as well as state and county liens. While the latter result seems sensible, it also means that the rank of the federal lien is determined in each case by state, not federal, law. This would pervert the principle that the status of the federal lien "is always a federal question" (*United States* v. *Security Trust & Savings Bank*, 340 U. S. 47, 49) and abandon the "cardinal principle" of uniformity in federal taxation. *United States* v. *Gilbert Associates*, 345 U. S. 361, 364.

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more liens some of which were concededly prior to the federal tax lien * * *." It is clear, however, in California as elsewhere, that the attachment lien there involved would have been superior to a subsequent mortgage. *Bank of America National Trust and Savings Assn.* v. *Hill,* 9 Cal. 2d 495; *Duhart* v. *O'Rourke,* 99 Cal. App. 2d 277. It is equally clear that such a mortgage, if executed before filing of the federal lien, would have been superior to the federal lien. Nevertheless, the attachment lien, though it antedated the federal lien, was held by this Court to be subordinate.

There is not a word in the opinion, and there is no basis in reason, to support the view that the result in *Security Trust* would be different if a mortgagee happened to be in the picture. The suggestion is, however, that the position of a California attachment lien as against the federal lien will be determined by precisely this adventitious circumstance. We submit that the suggestion is fallacious.

2. Respondent argues further that the attachment lien in *Security Trust* lacked the preferred status under state law of the municipal liens involved here. Stated separately, but essentially connected, is the third attempted distinction that "the attachment lien had not reached the stage of immediate inforcibility that characterizes the City's tax liens in this case." But neither of

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these assertions affords any basis, either under the *Security Trust* decision or the terms of the federal statutes, for applying here the "first in time" doctrine which was held inapplicable in *Security Trust*.

As we have shown in our main brief (pp. 21–28), the *Security Trust* decision not only denies the applicability to the federal lien of the "first in time, first in right" doctrine; it also states the only possible condition under which another lien *might*, by being earlier in time, take precedence over the federal lien. That condition is that the earlier competing lien must, at least, be "specific" and "perfected" in the same sense required to defeat the Federal Government's priority under R. S. 3466. 340 U. S. at 51.[5]

We have also shown in our main brief that (pp. 25–28) respondent's liens do not meet this test. Respondent counters (Supp. Br. T12) with the assertion that its liens were "perfected" "in every sense in which the term is used outside the esoteric world that has enveloped Section 3466 of the Revised Statutes since 1929." But the precise point is, again, that what respondent cavalierly characterizes as the "esoteric world"

[5] As we noted in our main brief (p. 25, n. 11), the Court has left open the question whether even a specific and perfected lien will prevail against the priority of the United States under R. S. 3466.

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of R. S. 3466 envelops this case under the plain mandate of *Security Trust.*[6]

And this conclusion, which we supported at length and which the Court adopted in *Security Trust,* makes obvious sense. It seems clear that as to tax debts, for which Congress specifically created a lien, the Federal Government should enjoy no less secure a position against other claimants than it does merely as a general creditor in insolvency. Respondent suggests no sound reason for this Court's departure from the view that "If the purpose of the federal tax lien statute to insure prompt and certain collection of taxes due the United States from tax delinquents is to be fulfilled, a * * * rule [similar to that under R. S. 3466] must prevail here." *Security Trust,* at 51.

In short, the doctrine of "first in time, first in right" is no more effective here than it was in *Security Trust.* Respondent undertakes to avoid this conclusion by reference (Supp. Br. T14) to

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[6] In *Michigan* v. *United States*, 317 U. S. 338, ruling that the federal estate tax lien prevailed over a subsequent state tax lien, the Court noted that there was no need in that case to "consider the extent to which Congress may give, or intended by § 315 (a) to give, priority to a federal lien over a *previously perfected* state lien. Compare *New York* v. *Maclay*, [288 U. S. 290,] 292; *Spokane County* v. *United States*, [279 U. S. 80,] 95; *United States* v. *Texas*, [314 U. S. 480,] 484–6." 317 U. S. at 341 (emphasis added).

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the statement in the House Report on what is now 26 U. S. C. 3672 that "There is no reason why the Government should not occupy the same position with reference to liens on property as does the individual." H. Rep. No. 1018, 62d Cong., 2d Sess., p. 2. If this statement had no context, it would mean, of course, that this Court erred grievously less than a year ago in *United States* v. *Gilbert Associates,* 345 U. S. 361, and little more than three years ago in *United States* v. *Security Trust & Savings Bank,* 340 U. S. 47. But the statement has a clear context, and that context repels the inference respondent proposes. As we have shown (*supra,* p. 8), and as respondent agrees (Supp. Br. T11), the Report was concerned strictly with the problem of notice. It was with reference to this problem—and only as it affected the classes of interests specified—that Congress determined to place the Federal Government in the position of the private, individual lienor. Had it intended to equate the Government with such individuals in all, or any, other respects, Congress could quite simply have said so. But the precise, sparing language Congress chose gives no hint of support to the view that the rule of "first in time, first in right" was being adopted.

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CONCLUSION

It is respectfully submitted that the judgment below should be reversed.

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DECEMBER, 1953.

U. S. GOVERNMENT PRINTING OFFICE: 1953

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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 830

UNITED STATES OF AMERICA, PETITIONER

v.

CITY OF NEW BRITAIN, CONNECTICUT, ET AL,
RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Supreme Court of Errors of Connecticut (R. 17-23) is reported in 139 Conn. 363, 94 A. 2d 10.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTIONS PRESENTED

Whether the Federal tax lien, admittedly subordinate to two mortgages and a judgment lien, (P.5), is superior to municipal tax liens, which are admittedly superior to the said mortgages and judgment lien.

Citations to Transcript of Record indicated by R.
Citations to Petition indicated by P.

STATUTES INVOLVED

The pertinent portion of the statutes involved are set forth in the Petition at pp. 20-22.

ARGUMENT

The issue involved is not the seemingly wide one of the priority of Federal taxes over municipal taxes. It has narrowed down to the definition of the Federal statute in relation to the circumstances here pertaining. In that sense, it was for the state court to decide, and its decision was manifestly correct.

I

THE DECISION BELOW IS CORRECT

The conclusion of the Supreme Court of Errors of Connecticut, after remarkable rationalizing of the problem presented, is clearly and lucidly sound and workable. The gist of that Court's opinion is stated in the following excerpt:

> "Moreover, if priority were accorded to the Federal liens over those of the municipality, the result would have to be that either the rank of the municipal liens would be reduced below that of the mortgages and judgment lien, which would be in violation of the State law, or the position of the Federal liens would be moved up to a place ahead of the mortgages and judgment lien, in violation of Sec. 3672. It can hardly be assumed that the Congress intended any such result. The only reasonable interpretation of Sec. 3672 is that the Congress, in enacting it, ex-

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> pressed the intention that Federal liens should be subordinated to such mortgages and judgment liens as are described therein and, consequently, subordinated to such other incumbrances as have priority over those mortgages and judgment liens. *Ferris v. Chic-Mint Gum Co.* 14 Del. Ch. 232, 239, 124 A. 577; *Board of Supervisors v. Hart,* 210 La. 79, 93, 26 So. 2d 361. In other words, the Congress has not undertaken so to legislate that, under the circumstances present in this case, the Federal liens would have priority over the municipal liens." (R.22)

This language takes the dispute from the realm of failing "to give full effect to the Federal lien statute," as claimed by the Petitioner (P. 9).

The Petitioner once again, as in the courts below, resorts to Sec. 3466, this time in a footnote (P. 16-17). The reference is to *Spokane County v. United States,* 279 U. S., 80, 91, and it is stated that "---this Court seems to have agreed---" (P. 17). The language of this Court actually was: "Moreover, it is contended by the government that the relative priorities could have been maintained in that case by setting apart sufficient funds to pay the mortgage before paying the Federal taxes and then providing for payment of the State taxes out of the sum so set apart."

The Spokane case was decided under Sec. 3466, having to do with persons adjudged insolvent, and has no application here (R. 20). Furthermore, the Court did not in its opinion agree with the government's contention. It af-

firmed the judgment of the majority of the Supreme Court of the State of Washington.

The respondent also wishes to note that the remedy suggested would not resolve the anomaly, but only unjustly take funds from the mortgagee involved.

II

THERE IS NO CONFLICT OF DECISION

The decision of the Supreme Court of Errors of Connecticut, does not rest on the theory that municipal liens are paramount to Federal liens (P. 16). The decision has made a practical application of legal principles and statutes to a given set of facts. To reason otherwise, as has the Petitioner in the Superior Court of Connecticut and in the Supreme Court of Errors of Connecticut, would be to continue the creating of anomalies which are not meant to exist under our laws.

There is no conflict and the states are not at liberty to preempt the paramount taxing power of the United States of America, as feared by the Petitioner (P. 18).

III

THERE IS NO IMPORTANT QUESTION OF FEDERAL LAW

This case does not set forth any problem which makes for an important question of Federal law. The only reason for its present status is that there was not enough money to pay all debts. On this basis alone there cannot arise a Federal problem such as is claimed by the Petitioner.

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The determination of the case in Connecticut does no harm to the petitioner. The Statutes of the United States nowhere state absolute priority.

CONCLUSION

For the foregoing reasons it is respectively submitted that this petition for writ of certiorari be denied.

Respectfully submitted,

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Counsel for Respondent

Of Counsel
HAROLD KOPLOWITZ

June, 1953

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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 92

UNITED STATES OF AMERICA, PETITIONER

vs.

CITY OF NEW BRITAIN, CONNECTICUT, ET AL.,
RESPONDENT

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

BRIEF FOR RESPONDENT

OPINIONS BELOW

The opinion of the Supreme Court of Errors of Connecticut (R. 17-23) is reported in 139 Conn. 363, 94 A. (2d) 10.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petitioner's Brief.

QUESTIONS PRESENTED

The Supreme Court of Errors of Connecticut has construed Sec. 3672 of the Internal Revenue Code as expressing an intention that Federal liens should be subordinated to such mortgages and judgment liens as are

described therein and, consequently, subordinated to such other encumbrances as have priorities over those mortgages and judgment liens. The question is:

Whether the Federal tax lien, admittedly subordinate to two mortgages and a judgment lien, (Sec. 3672 of the Internal Revenue Code) is superior to municipal tax liens, which are superior to the said mortgages and judgment lien by state law.

STATUTES INVOLVED

The pertinent portion of the statutes involved are set forth in the Petitioner's Brief at "Appendix".

SUMMARY OF ARGUMENT

The distinguishing feature of the cases relied on by the United States is that they are all within the purview of *Sec.* 3466, *Rev. Stat.* (1875), 31 *U. S. C. Sec.* 191 (1946). In the instant case *Secs.* 3670-3672 *Int. Rev. Code* pertains. 26 *U. S. C. Secs.* 3670-3672 (1946). There is no other pertinent legislation.

The United States has no lien rights excepting those created by statute. *Equitable Trust vs. Connecticut Brass & Mfg. Corp.* 290 *F.* 712, 719.

The assumption that the Congress intended to create the so-called circular priority claimed by the United States can hardly be maintained. This anomaly occurs when there is a departure from the rule "first in time, first in right". The United States claim of priority over the general and inchoate lien should allow for subordina-

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tion, on the same grounds, of its own lien to one who has perfected his right. Legislation contemporary to the Internal Revenue Statutes by which the United States makes its claims, indicates the variance between the intent of Congress and the interpretation of the Supreme Court.

Congress has never enunciated a federal lien priority over senior liens. The petitioner should work for clarity in legislation rather than strive for court interpretations based on the innate superiority of its position.

ARGUMENT

The enforcement of the United States tax lien is frequently complicated by the fact that there are other creditors with liens. Protection of this federal lien, if extended too far, threatens the security of commercial transactions. Also, other taxing authorities are adversely affected.

The federal taxing power is, without question, supreme. However, if federal tax legislation contemplates continuation of the federal system, this power must be exercised by comety and amicable adjustment, rather than harsh decree from the admittedly superior position. Or, Congress must concern itself immediately with stated limits to the use of the federal power, at least in cases affecting lesser municipalities.

This case presents an opportunity for the United States Supreme Court to rule with consideration for the liens recognized in the State of Connecticut. There is no insolvency here and Sec. 3466, the basis for the decisions favorable to the United States, need not be applied.

The distinguishing feature of the cases relied on by the United States is that they are all within the purview of this Sec. 3466 of the Internal Revenue Code. This section provides that whenever the party indebted to the United States is insolvent, the government shall have priority. It does not apply where the taxpayer has not been so adjudged. *Equitable Trust Co. v. Connecticut Brass & Mfg. Corp.* 290 *F* 712, 719.

It would be interesting to get an elaboration of the dissenting opinion in the Gilbert Associates case. *Vol.* 97, *No.* 11*L ed.* (*Adv. Rep.*)

"(B)y a comparatively slight change of the statute law the rights of the United States could be sufficiently protected without endangering the interests of other persons". *United States vs. Curry* 201 *F.* 371, 374.

In the instant case *Secs.* 3670-3672 *Internal Revenue Code* pertain. There is no other pertinent legislation. These sections provide that the tax due the United States shall be a lien upon the debtor's property, this lien arising "at the time the assessment list was received by the collector" and continuing until the tax is paid or becomes unenforceable. Sec. 3672 allows priorities to mortgagees, pledgees, purchasers and judgment creditors, when the liens antedate the United States liens.

Although it is said that "consistency is a lost jewel in government", *in re Wilson* 23 *F. Supp.* 236, 239, it would seem to be elementary justice that the United States, claiming priority over the general and inchoate lien should allow for subordination, on the same grounds, of its own lien as

against one who has perfected his right. Unless, of course, the federal statute treats the federal liens specially or preferentially. Certainly, the logic of the lower court in cases such as the matter at hand, is difficult to reject.

It is also interesting to note the application of the federal statutes in the decisions of the United States Supreme Court. An illuminating and dramatic example may be seen in the statutory lien for delinquent taxes on distilled spirits. *Rev. Stat. Sec.* 3251 (1875). (Sec. 3670 was derived from contemporaneous legislation.) Congress provided that no performance bond of a distillery should be approved "unless he is the owner in fee, unincumbered by any mortgage, judgment, or other lien, of the lot or tract of land on which the distillery is situated, or unless he files with the collector · · · the written consent of the owner of the fee, and of any mortgagee, judgment creditor, or other person having a lien thereon, duly acknowledged, · · · expressly stipulating that the lien of the United States for taxes and penalties shall have priority · · · and that in the case of the forfeiture of the distillery property · · · the title of the same shall vest in the United States discharged from such · · · incumbrance."

These precautions would hardly be necessary to protect the United States if the Congress intended what the United States Supreme Court assumes.

Attention is also brought to 95 *U. of Pa. L. Rev.* 739, 748 (1947) in which lien claimants are considered and Sec. 3678 of the Internal Revenue Code interpreted as clearly stating that they come ahead of the United States.

The United States has no lien rights excepting those created by statute. *Equitable Trust vs. Connecticut Brass & Mfg. Corp.* The Congress not having legislated priority over antedated encumbrances, and having dated a federal lien from the time the collector receives the assessment list, the liens claimed by the United States in this case have no priority. Therefore, the principle of first in time, first in right, applies; *United States vs. Greenville* 118 *F* (2nd) 963, 966. To subordinate prior liens is to extend the general tax lien statute beyond its language and intent.

The assumption that the Congress intended to create the so-called circular priority claimed by the United States can hardly be maintained. A more reasonable interpretation of Sec. 3672 is that if the federal liens are subordinated to the mortgages and liens described in said sections, they are subordinated to such encumbrances as have priority over said described mortgages and liens.

Ferris vs. Chic-Mint Gum Co. 124 *Atl.* 577

Board of Supervisors vs. Hart, 210 *LA.* 78,93: 26 *So.* 2nd 361

Departure from the rule of first in time, first in right, brings forth circuity of priority. The United States has continually pressed for preference in these seemingly anomalous instances, and its success has been an illustrative dramatization of how far afield a judicial determination can go from legislative intent. Chronological order will not allow for this vicious circle. It is simple and basic. Anomalies, destructive of good legal thinking are avoided. The desirability of avoiding such situations was explicitly

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recognized in H. R. Rep. 2320, 82*nd Cong. 2nd. Sess.* 13 (1952)

The argument of the United States in most of the cases similar to this one, should be directed to the Congress. Nowhere has Congress stated a federal tax lien priority superseding senior liens valid and effective under state law. There is no evidence that Congress ever intended any such result. Such an intent might have been shown by protest against numerous cases following after *Spokane County v. United States,* 279 *U. S.* 80. The argument of the United States is based on the snow-balling power in the effectuating of its liens gained through varying court decisions creating jeopardy and dismay in lesser municipalities.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgment of the Supreme Court of Errors of Connecticut should be affirmed.

Respectfully submitted,

WILLIAM S. GORDON, JR.
HAROLD KOPLOWITZ
FRANK R. KENNEDY
Counsel for Respondent

ERRATA

Page 2,	line 4.	"F. Supp. III" should read "F. Supp. 111"
Page 3,	line 17.	"Littletown" should read "Littlestown"
	line 37.	"F.2d Supp. 64," should read "F.2d 64,"
	line 44.	"Eo. 478," should read "Eq. 487,"
Page 4,	lines 56.	"Samms v. Chicago Title & Trust Co., 111 N.E. 2d 172 (349 Ill. App. 413, 1953)" should read "Samms v. Chicago Title & Trust Co., 349 Ill. App. 413, 111 N.E. 2d 172 (1953)."
	line 39.	"F.2d. Supp. 304," should read "F.2d. 304,"
Page 6,	line 7.	"Construction 1914-" should read "Construction 914-"
Page T3,	line 23.	"3670 an 3671," should read "3670 and 3671,"
Page T4,	line 32.	"Section 1853, 758" should read "Sections 1853, 758"
Page T6,	line 10.	"ineluctable correct" should read "ineluctably correct"
Page T9,	line 26.	"Government' argument" should read "Government's argument"
	line 28.	"Governments reliance" should read "Government's reliance"
Page T10,	line 7.	"liens and; (3)" should read "liens; and (3)"
	line 8.	"of immediate in-" should read "of immediate en-"
	line 30.	"prevsion" should read "provision"
	line 33.	"unpaid taxs" should read "unpaid taxes"
Page T11,	line 23.	"misapprehenson" should read "misapprehension"
Page T12,	line 6.	"So far as" should read "So far as other"
	line 7.	"lins" should read "liens"
Page T13,	line 18.	"saving of he" should read "saving of the"
	line 20.	"jurgment" should read "judgment"
Page T14,	line 12.	"discuseed." should read "discussed."
Page N1,	line 1.	"Osborn," should read "Osborne,"
Page N7,	line 35.	"at the tme" should read "at the time"

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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 92

UNITED STATES OF AMERICA, PETITIONER

v.

CITY OF NEW BRITAIN, CONNECTICUT, ET AL,
RESPONDENT

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

SUPPLEMENTAL BRIEF FOR RESPONDENT

GRANT OF PERMISSION TO FILE

This supplemental Brief for the Respondent is submitted pursuant to permission granted by the Court at the close of the argument heard in this case on December 1, 1953.

QUESTION PRESENTED

The question here is whether the Supreme Court of Errors of Connecticut committed reversible error in affirming a judgment directing distribution of the proceeds of a mortgage foreclosure sale of Connecticut real estate.

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The judgment provided for distribution in the following order: expense claimants; the City of New Britain as lienor for real estate taxes and water charges; L. Brown as holder of first and second mortgages, including certain costs taxed in his favor; W. G. Dunn as judgment lienor; and the United States as lienor for withholding and federal unemployment taxes and federal insurance contributions (R. 10-11). Although the present controversy is by stipulation (R. 12) solely between the City of New Britain and the United States as to their relative priority, the mortgages and judgment lien are not stipulated out of the case. In particular it is pointed out that the controversy does *not* concern merely the relative superiority of the federal and the municipal tax liens in a surplus remaining after satisfaction of the mortgages and other prior claims, as is suggested in the Government Brief at pp. 2 and 4 n. 1.

SUMMARY OF ARGUMENT

I

The Government's first argument is that although the municipal liens on the Connecticut realty here involved are superior by Connecticut law to encumbrances which are by federal law superior to the Government's tax liens, the municipal liens are not thereby superior to the federal tax liens. Yet neither logic nor authority is shown to require or, indeed, to permit any different result. Even if *arguendo* it should be conceded that the federal liens would supercede the City's liens in a contest not involving encumbrances prior to the federal liens, the presence of such encumbrances here creates a logically insoluble circuity of priority on the assumptions made by the Goverment. The resolution of the problem by the Connecticut courts is presumptively correct and cannot be overturned on a suggestion of the existence of possible alternatives which generate incongruities of their own.

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II

The government concedes the validity and priority of of the mortgages foreclosed below. Under the law of Connecticut, and generally, mortgages on realty are subject to liens securing local taxes on the realty. Mortgagees can ordinarily protect their security by paying such taxes and adding the amounts paid to their mortgages. In enacting in 1913 the notice-filing provision now found in Section 3672(a) of the Internal Revenue Code, which protects mortgages as against unfiled federal tax liens, Congress cannot be deemed either to have been unaware of the superiority generally conferred on local real estate tax liens over mortgages or to have intended to create a circuity of priority involving these three classes of liens. The only reasonable interpretation of Section 3672, therefore, is that Congress intended invalidation of the unfiled federal lien as against not only mortgagees and others named therein but also local governmental units holding paramount tax liens according to normally prevailing rules of relative priority.

III

Although the court below relied on what it regarded as the reasonable interpretation of Section 3672(a) of the Internal Revenue Code rather than on the rule of "first in time, first in right," which it thought applicable under Sections 3670 an 3671, the Government challenges the discussion of the latter rule as a holding contrary to its position that the federal tax lien is always paramount under these sections. Section 3672 is viewed in its Brief as a statute creating exceptions to that paramountcy rather than as a notice-filing statute designed to protect *subsequent* purchasers and certain *subsequent* encumbrances against the harsh consequences of enforcing the secret federal tax lien. Finally, the Government urges that the City's liens were not perfected so as to

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prevail over the federal tax liens under the rules developed in the cases construing Revised Statutes Section 3466, conferring priority on the United States in certain liquidations of insolvent estates. The repositories of evidence of legislative intent in the enactment and amendment of Sections 3670-3672 of the Internal Revenue Code are not only devoid of any suggestion that the general tax lien is to have any special priority or that the policy embodied in the federal priority statute (Rev. Stat. Section 3466) has any revelance for the general lien statute; they contain convincing proof that the Government's position thereunder is intended to be assimilated to that of the ordinary private lienor.

ARGUMENT

I

Even if the federal liens were superior to the municipal liens in a hypothetical situation not involving a mortgage and judgment lien, the disposition of the proceeds by the Connecticut courts in this case reaches the most reasonable resolution of a logically insoluble problem.

The real property subject to the liens involved in this case was sold to the foreclosing mortgagee for $27,500. Net rental receipts augmented the proceeds to slightly more than $28,000. The dispute here concerns the rival claims to the balance of roughly $26,000 remaining after defrayal of sale expenses. It will simplify the presentation and, it is believed, entail no distortion to use round numbers and to assign letter symbols to the different liens involved.

The Connecticut courts made the first allocation out of the balance to the City of New Britain in payment of its liens securing taxes and water charges amounting to $4,000 pursuant to Conn. Gen. Stat. Section 1853, 758 (1949):

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d the letter *A* may be assigned to these liens. Next in e order of distribution came the two mortgages which were reclosed and thereafter a junior judgment lien, but for esent purposes they may be grouped together under the tter *B*, since there is no dispute about the order among ese three liens. These liens absorbed $17,000 of the bal- ce. Finally, the judgment under review ordered the pay- ent of any remainder to the United States on account of tax liens, and these may be grouped under the letter *C*. he $5,000 balance was insufficient to pay the Government's ,000 claim in full.

The government does not challenge the priority of *A* er *B*, and concedes the priority of *B* over *C* (Brief, pp. 4,). It contends nevertheless that *C* is paramount to *A*, and d indeed, on page 6 of its Brief, that logic is violated by acing *A* over *C*. Insofar as logic affords a guide to solu- on of the problem presented, the result reached below would em to be irrefutable.

The contention that *C* is prior to *A* is based on a phil- ophy or a prepossession that whatever is federal is neces- rily supreme, whether Congress wills it so or not. We gorously challenge the validity of that assumption in the gument made under II and III, *infra*. But even if the law ere otherwise and *C* could be said to be paramount to *A* if ly those two lienors were involved, we submit that the dgment of the Connecticut courts in this case would not in error.

The argument of the Government creates a circuity priority: *A* over *B*, *B* over *C*, *C* over *A*. Courts eschew ch situations as logical absurdities, and they do not arise the application of the usual rules governing the relative iority of liens. If a court is unable to escape a situation circuity of priority, it has of course a logically insoluble

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problem on its hands. The courts have wrestled with this kind of problem for two and one-half centuries, and legal scholars have vied with the courts in venturing solutions. Professor Osborne in his new *Handbook on Mortgages* discusses seven methods of disposition, none of which is free from criticism.[1] Logic fails because each claimant is entitled to the full extent of his lien as against an inferior lien, but can be required to yield to the full extent of a superior lien; yet every lien is superior and inferior at the same time.[2] In such a situation there can be no ineluctable correct result.[3]

In such a situation as that presented here the presumption in favor of the validity and correctness of the judgment of the highest court of a state comes here with special strength. While of course not binding on this Court, a state court's determination in a case involving an asserted conflict between a state tax statute and a federal constitutional or statutory provision will be accorded great respect and sustained if "no real oppression or manifest wrong" results. *Atlantic Coast Line R. R. v. Phillips*, 332 U. S. 168 (1947).

The judgment now before the Court is the judgment of a unanimous court of last resort of the State of Connecticut affirming a state superior court, there being full argument of the question and full consideration of the contentions here presented, in both courts below. The Government has failed to discharge the burden resting on it in seeking the overturn of the Connecticut courts' judgment.

II

In invalidating the federal tax lien as against mortgagees and judgment creditors Congress must be taken to have intended invalidation of the federal lien as against local real property tax liens which are normally prior to mortgages and judgment creditors' liens.

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The local real estate tax was in 1913, when Section 3672 was enacted in its original form, and is still in 1953 the basic source of revenue by which local communities are enabled to provide the elementary governmental services of fire and police protection, maintenance of schools, streets, and sewers, etc.[4] As intimated in the Government's Brief at page 23, this kind of tax is generally secured in this country by a lien which is accorded priority over all other encumbrances, without reference to the time the latter arise.[5]

Laymen are hardly less aware than lawyers of the prime nature of the real estate tax lien and its crucial importance in real estate transactions. The members of the Congress that enacted the original notice-filing provision in 1913[6], now Section 3672(a) of the Internal Revenue Code, cannot be deemed to have legislated in ignorance of what has been common knowledge among men of affairs in this country for a hundred years. It would be even more incredible to suppose that Congress, familiar with the general superiority of local real estate tax liens over mortgages and other encumbrances, would invalidate the unfiled federal tax lien as against mortgagees and judgment creditors and yet intend to confer superiority for the federal lien as against the local tax lien. To impute to Congress an intent to create situations of circular or triangular priority surely does violence to the canon that a construction will be avoided which leads to an absurdity or imputes total ignorance to the legislature when an application having no such consequences is possible.[7] As the court below concluded, it is not merely a permissible but "The only reasonable interpretation of Section 3672 . . . that the Congress, in enacting it, expressed the intention that Federal liens should be subordinated to such mortgages and judgment liens as are described therein and, consequently, subordinated to such other incumbrances as have priority

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over those mortgages and judgment liens." 139 Conn. at 373 94 A.2d at 15 (R.22).

Precisely the same conclusion was reached by Chancellor Walcott in *Ferris v. Chic-Mint Gum Co.*, 14 Del. Ch. 232, 124 Atl. 577 (1924), a case on all fours with the present case.[8] In addition to this precedent, the only case in point cited in the Government's Brief, the result below is supported by the several authorities cited in the footnote appended hereto.[9] If logic falls short of sustaining the Government's first argument, its appeal to authority (in its Brief at pp. 6 and 12) is no better founded.[10]

But it is said at page 15 of the Government's Brief that if a municipal tax lien may prevail over a federal tax lien, a state is free to subordinate the federal lien to every manner of state lien, thus defeating the uniformity which is the cardinal principle of federal tax legislation. Now uniformity is not the legal equivalent of supremacy. Moreover, the principle of uniformity, whatever its strength, is one of construction and cannot override other manifestations of Congressioal intent, even though the federal treasury may net less from lien foreclosure proceedings. In five of the nine amendments of the general tax lien statutes which have brought Sections 3670-3672 to their present form[11] Congress has concerned itself with making the statute operate more equitably in respect to third parties rather than more uniformly and effectively as a means of insuring collection of taxes due the United States. The same policy is found in what Congress has done in Sections 64a and 67c of the Bankruptcy Act whereby the relative status of federal tax claims and federal tax liens in bankruptcy proceedings has waned over the course of the last half century.[12]

The court's ruling below, however, that Congress must have intended the invalidation of the unfiled federal tax lien

against not only mortgages and judgment liens but also local encumbrances paramount to such mortgages and judgments, involves no violation of the principle of uniformity. As pointed out above (see note 9 and the accompanying text), other courts are in general accord with the ruling. And, indeed, the Government is constrained to concede that where a mortgagee may under state law pay municipal taxes and charges and add the amount to the secured indebtedness, the amount so paid is secured by a lien of the same stature as the mortgage *vis-a-vis* the federal tax lien.[13] If Congress should become persuaded that states are about to engage in widespread subordination of mortgages and judgment liens to other liens in order to defeat the tax lien of the United States, and that national tax collection may be jeopardized hereby, then Congress may appropriately legislate against the danger.

III

In any event, the municipal liens which arose before the federal liens are prior in right because prior in time.

A. Congress intended the rule of "first in time, first in right" to apply under the federal general tax lien statute.

While the decision below did not rest on the rule that "first in time is first in right" and has been shown to be correct without reference to that rule, convincing evidence that Congress intended the rule to govern in the application of the original general tax lien statute negates the Government' argument for an absolute priority over liens not named in Section 3672.

The Governments reliance is placed on *United States v. Security Trust & Savings Bank*, 340 U. S. 47 (1950), sustaining the priority in right of a federal tax lien which arose after an attachment lien had become effective under Califor-

nia law. The *Security Bank* case is distinguishable from that presented here in that (1) it did not involve three or more liens some of which were concededly prior to the federal tax lien; (2) the attachment lien there involved possessed none of the characteristics of the City's real estate tax lien which enable it to supersede other encumbrances, including both prior and subsequent mortgages and judgment liens and; (3) the attachment lien had not reached the stage of immediate inforcibility that characterizes the City's tax liens in this case.[14] Insofar, however, as the United States relies on *Security Bank* for asserting a rule of absolute paramountcy for the general federal tax lien over all liens not literally excepted by Section 3672[15], its Brief ignores cogent evidence of Congressional intent to the contrary.[16]

Graphic proof of the Congressional intent with respect to the relative priority of the lien created by Section 3670 is found in the contrast between the language it has used in the general tax lien statute and that found in the contemporaneously created lien for taxes on distilled spirits.[17] Congress became concerned, however, lest the purpose of collecting the tax on distilled spirits should be defeated by prior liens, and so it provided explicitly for a *first lien* in legislation that survives today in Section 2800e (1) of the Internal Revenue Code.[18] But Congress was so solicitous of the rights of prior lienors that it insisted on obtaining waivers of their priority before a distiller could obtain a performance bond, a condition precedent to legal entry into the distilling business.[19] This waiver is still provided for in Section 2815 (b)(1)(B) of the Internal Revenue Code. If the Government's second argument here were sound, such an elaborate provsion would be superfluous. In *Blacklock v. United States*, 208 U. S. 75 (1908), where it became revelant to determine the relative priority of a federal tax lien securing unpaid taxs on distilled spirits as against property for which no waiver had been ex-

ecuted, the Court ruled in favor of the Government solely and explicity on the grounds that the Government's lien was first in time. *Id.* at 89. See also *Mansfield v. Excelsior Refining Co.*, 135 U. S. 326, 339 (1890).

The suggestion in the Government's Brief (at p. 13) that "Stronger language could hardly have been selected to reveal" a purpose to confer paramountcy on the general lien over state-created liens is belied by the ease with which Congress selected the expression "first lien" when that fitted its purpose. The contemporaneity of the origin of the general and special tax lien statutes and of amendatory legislation[20] precludes the suggestion that Congress did not deliberately refrain from conferring the same status on the general tax lien as it did on the distilling tax lien.

The Government purports to find in the notice-filing provision added in 1913 a purpose to confer paramountcy on the federal tax lien as against all liens not specifically named therein without reference to the chronology of their attachment. Since the City of New Britain is not explicitly comprehended within the list of beneficiaries of that amendment, it is argued that it cannot prevail over the federal tax lien even though prior in time. This reading of the notice-filing provision discloses a misapprehenson of its purpose and effect. The specific purpose of the amendment of 1913 was to overrule *United States v. Snyder*, 149 U. S. 210 (1893), which had enforced the federal tax lien as against a *subsequent* bona fide purchaser of realty. Likewise the purpose of the amendment of 1939, as pointed out in Mr. Justice Jackson's opinion in *Security Bank*, 340 U. S. at 53, was to overrule *United States v. Rosenfield*, 26 F. Supp. 433 E. D. Mich. (1938), which enforced the federal lien as against a *subsequent* purchaser of securities. These cases were no more than applications of the "first in time, first in right" rule.

Congress acted to relieve against the resulting harshness by protecting purchasers and certain encumbrancers as against even a *prior* federal tax lien of which they had no notice. The rule of "first in time, first in right" still prevails, but as to three classes of lienors, the Federal Government's lien is postponed in effectiveness until notice-filed. So far as lins are concerned, the law of 1913 makes no change: The rule is still "first in time, first in right" as four dozen cases attest.[21]

B. Congress did not intend to enact the doctrine of the inchoate and general lien.

Although the Government acknowledges that the distribution of the proceeds in the foreclosure action below is not governed by the federal priority statute (Rev. Stat. Section 3466, (1875), it invokes precedents decided under that statute in support of its contention that the City's tax liens here were not perfected before the federal liens arose (Government's Brief, pp. 25-28.) In view of the specific nature of the City's tax and of the liens securing it, as contrasted against the general tax lien of the Government, its counsel could not with good grace challenge the specificity of the municipal liens. Moreover, the liens were "perfected" against every interest and in every sense in which the term is used outside the esoteric world that has enveloped Section 3466 of the Revised Statutes since 1929.[22]

Whatever may be said as to the process by which the doctrine of the inchoate and general lien has been engrafted onto the federal priority statute[23], there is no justification whatever for reading the doctrine into the federal tax lien legislation. The suggestion in the Government's Brief (pp. 25 *et seq.*) that the two statutes should be assimilated ignores the fact that nowhere in legislative records and reports that throw light on the purpose and meaning of the federal tax

lien statute and its nine amendments is there the breath of a suggestion that the federal priority statute bears any relation or, indeed, even exists[24]. In bankruptcy legislation, this Court has always recognized that Congress has exercised care in distinguishing between priorities and statutory liens for taxes[25]. If the federal priority and tax lien statutes are now to be amalgamated, there should be, if not an affirmative showing that the Congressional purpose is being effectuated, at least a demonstration that the result is not inconsistent with that purpose.

Irrefutable proof that Congress intended no enactment of the rule disentitling inchoate and general liens from ranking in the order of their creation under Sections 3670-3672 is provided by the House Report accompanying the bill that became the 1913 amendment. One of the Government's examples of an inchoate and general lien is a judgment lien (see its Petition for Certiorari at p. 14, n. 5). The implication is then that were it not for the express saving of he judgment creditor in the notice-filing statute, the federal tax lien would prevail over a prior jurgment lien. The House Report, however, discusses the plight of judgment creditors, along with purchasers and mortgagees, who could not under the law as then written protect themselves against prior secret tax liens without consulting every collector in the country[26]. If the law were as the Government contends, it would not have done the judgment creditor any good to consult all the collectors in the country, because a later federal tax lien would override his judgment equally with a prior one.

The contention of the Government in this case that the federal tax lien under Sections 3670-72 must be accorded paramountcy by virtue of its assimilation with the federal priority under Revised Statutes Section 3466 is wholly con-

tradicted by this plain, unambiguous statement in the House Report accompanying the 1913 amendment: "There is no reason why the government should not occupy the same position with reference to liens on property as does the individual[27]." The statement embodies the philosophy written into Section 3670 and all its amendments. The Government has cited, and it is believed can cite, no evidence of a contrary legislative intent. Insofar as the *Security Bank* case may be thought to be based on a contrary view of the tax lien statute, it is pointed out that the Government's unopposed Brief in that case did not call the attention of the Court to the evidences of legislative intent herein discuseed. Nor was the impressive array of authority treating the federal tax lien like an ordinary private lien discussed in that Brief.

The centripetal force that has influenced so much political thought in the last quarter century should not be permitted to control the construction of a statute enacted and amended with completely different presuppositions in the legislative mind. It may be that the federal tax lien *should* prevail over all inchoate and general liens if the collection of taxes due the United States from tax delinquents is to be adequately fulfilled. But Congress has not said so. Congress is subject to no constitutional compulsion to enact tax collection legislation with a single eye to its effectiveness in increasing the revenue. Notwithstanding the magnitude and supremacy of its power to tax, Congress is under no duty to override municipalities throughout the country in their concurrent efforts to collect revenue from real estate. On the contrary, Congress is constitutionally free to enact tax collection legislation which operates equitably as against third persons, including municipalities. It is constitutionally free to use its acknowledged powers in such a way that local governments can remain strong and continue to provide the

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basic services for which the American people still look to such governments.

CONCLUSION

For the foregoing reasons the judgment of the Supreme Court of Errors of the State of Connecticut should not be disturbed.

Respectfully submitted,

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December 1953

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FOOTNOTES

[1] *Osborn, Mortgages* §209 (1951). See also 4 *American Law of Property* §17.33 (1952).

[2] The Government suggests at pp. 7 and 17 of its Brief that there is another way out of the circuity created by its assumption in respect to the superiority of the federal tax lien. This solution would set aside enough to pay *B*, *i.e.*, the mortgage liens and the judgment before satisfying the Government. *A*, *i.e.*, New Britain, would be satisfied from the sum set apart. The suggestion appears to accord rather cavalier treatment to the interests of the mortgagee and the judgment creditor in the light of the protestations on pages 2 and 4 of the Government's Brief that the controversy here relates only to the relative priority of the City and the United States in a surplus remaining "after satisfaction of the mortgages and other prior claims." But it is to be kept in mind that while the bid here was $27,500, with $500 coming in from rent, actually the mortgagee who purchased the property applied his $15,000 debt to the bid. There was thus only $13,000 cash involved. $2,000 went to administrative expenses. $4,000 applied to the City's tax liens would leave $7,000. Surely the judgment lienor is then entitled to his $2,000 before any payment to the United States, whose lien is explicitly made invalid as against the judgment creditor by Section 3672. That leaves only $5,000 for the United States, *i.e.*, what it got under the lower courts' judgment.

The Government's method of solution can be applied with equal propriety in this wise: Start with the Federal Government, setting a part sufficient out of the $26,000 to pay its $8,000. Next would come the City of New Britain with its $4,000 of course, and then the mortgagee and judgment creditor. But the mortgagee and judgment creditor, being prior to the Federal Government, would be entitled to payment out of the sum of $8,000 so set apart. The ultimate result of this application would be the same as that reached by the judgment below. The logic that justifies forcing *B* to absorb *A*'s priority to protect *C* against indirect attack furnishes just as strong support for compelling *C* to absorb the priority of *B* in order to protect *A* against *B*. *Cf. Campbell, Protection Against Indirect Attack* in *Harvard Legal Essays* 3, 17-18 (1934).

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[3] Perhaps the closest approximation to a scientific solution to the problem is that advanced in a Note in 38 *Col. L. Rev.* 1267 (1938), proposing that the method of distribution seek to approach the reasonable expectation of each claimant as a junior lienholder. The equity of the lienholder subsequent to the smallest of the competing liens would thus be the strongest, and the lienholder who is subsequent to the largest lien would have the weakest position. That would be the Government here since it concedes priority to *B*, representing $17,000 in liens. As Professor Osborne points out, however, this method of solution has the disadvantage of considerable complexity (*Handbook on Mortgages* 538-9). So far as can be discovered, it has never been employed in a reported case.

[4] *Hellerstein, State and Local Taxation* 9, 643-7 (1952); *Seligman, Essays in Taxation* 345 (10th ed. 1925).

[5] *See Baltimore Shipbldg. Co. v. Baltimore*, 195 U. S. 375, 381 (1904) (per Mr. Justice Holmes); 4 *American Law of Property* 242 (1952); 51 *Am. Jur.*, Taxation 1016 (1944).

[6] 37 Stat. 1016.

[7] 2 *Lewis' Sutherland, Statutory Construction* 914-15 (1904).

[8] If this case is to be limited to its peculiar facts, as the Government suggests in its Brief at p. 12 n. 4, here are the peculiar facts again. But the Government suggests that *Ferris* has been limited and in effect discarded by the court which rendered it in In re *Mitchell's Restaurant, Inc.*, 31 Del. Ch. 121, 67 A.2d 64 (1949). This disparagement is made in spite of the fact that the court said explicitly and correctly in *Mitchell* that *Ferris* was not in point. 31 Del. Ch. at 128, 67 A.2d at 68. *Mitchell* involved unpaid state unemployment compensation contributions which were not even regarded as liens under the applicable state statute (Del. Laws 1941, c.280, §14(g)). Moreover, that statute explicitly preserved priority of federal taxes.

[9] *United States v. Sampsell*, 153 F.2d 731 (9th Cir. 1946) (involving a state corporate franchise tax, a mortgage, and a federal tax lien in bankruptcy; chronological order observed); *Levy v. Tubby's Wine & Liquor Shop, Inc.*, 110 N. Y. S. 2d 653

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(N. Y. City Ct. 1951) (state and city tax liens, judgment creditor's lien, and federal tax lien), *rev'd on another ground*, 116 N. Y. S. 2d 207 (1st Dep't 1952); *State v. Wynne*, 134 Tex. 455, 133 S. W. 2d 951 (1939) (state tax lien, mortgage, and a federal lien and priority in receivership proceeding). Moreover, the reasoning in *Board of Supervisors v. Hart*, 210 La. 78, 94, 26 So. 2d 361, 366 (1946), In re *Taylorcraft Aviation Corp.*, 76 F. Supp. 81, 85 (N. D. Ohio 1947), *aff'd*, 168 F. 2d 808 (6th Cir. 1948), and In re *Caswell Construction Co.*, 13 F. 2d 667, 672 (N. D. N. Y. 1926), supports the result below.

If we should bring in Rev. Stat. §3466 cases, as the Government has (see note 10, *infra*), we may cite in support of the result below the decisions in *United States v. Guaranty Trust Co.*, 33 F. 2d 533, 537 (8th Cir. 1929), *aff'd on alternative ground*, 280 U. S. 478 (1929); and *Wilcocks v. Waln*, 10 S. & R. 380 (Pa. 1824).

[10] Note 4 on p. 12 of the Government's Brief cites three cases as directly *contra* to the decision below. The first is a decision of an intermediate Illinois court, two judges participating, involving a mechanic's lien subsequent in time to the federal tax lien. The *Samms* case avowedly follows *Republic Nat. Life Ins. Co. v. Hedstrom*, 346 Ill. App. 555, 105 N. E. 2d 782 (1952), "which arose on a state of facts almost identical" and which contains an excellent refutation of the Government's second argument, *i.e.*, as to the applicability of the "first in time, first in right" rule to the federal tax lien. The second footnote authority is a memorandum opinion of a West Virginia circuit court, which involved Rev. Stat. §3466 rather than the federal lien statute involved here. The third case is an unreported opinion of a federal district court, which can not be scrutinized. This array of authority hardly settles anything against the decision below, even if it stood alone.

[11] 20 Stat. 331 (1879), eliminating relation back of lien to date tax became due; 37 Stat. 1017 (1913), postponing validity of lien to notice-filing with respect to purchasers, mortgagees, and judgment creditors; 43 Stat. 994 (1925), providing for notice-filing in records of towns and cities in New England; 45 Stat. 875 (1928), placing limitation on duration of tax lien; 53 Stat. 882 (1939), adding pledgees to list of beneficiaries of notice-filing

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and protecting purchasers, pledgees, or mortgagees of securities against any federal lien of which they have no notice or knowledge. The four amendments effected by 48 Stat. 757 (1934), 49 Stat. 1921 (1936), 53 Stat. 448 (1939), and 56 Stat. 957 (1942), have involved formal or procedural changes.

[12] See *Wurzel, Taxation During Bankruptcy Liquidation*, 55 *Harv. L. Rev.* 1141, 1145-6 (1942); Note, 56 *Yale L. J.* 1258, 1263 (1947); *cf. Davis v. Pringle*, 268 U. S. 315, 318 (1925); *Mellon v. Michigan Trust Co.*, 271 U. S. 236, 240 (1926).

[13] See *Sherwood v. United States*, 5 F. 2d 991 (E. D. N. Y. 1925); *Kohlmeier, Federal Tax Liens Under Rev. Stat. Sec. 3186*, 13 *Tax Mag.* 191, 196 (1935); *cf. United States v. Sampsell*, 153 F. 2d 731, 736-7 (9th Cir. 1946).

[14] Municipal tax liens on realty may under Connecticut law be enforced by levy and sale. Conn. Gen. Stat. §1853 (1949).

[15] No reported case decided since *Security Bank* has been found which gives effect to the Government's view of its holding. In the following *post-Security Bank* cases nonfederal liens were sustained as against the federal tax lien although not excepted by Section 3672: *United States v. Albert Holman Lumber Co.*, 206 F. 2d 685 (5th Cir. 1953) (materialman's lien); In re *Ann Arbor Brewing Co.*, 110 F. Supp. 111 (E. D. Mich. 1951) (local and state tax liens); *United States v. Acri*, 109 F. Supp. 243 (N. D. Ohio 1952) (attachment lien); *Sunnyland Wholesale Furn. Co. v. Liverpool & L. & G. Ins. Co.*, 107 F. Supp. 405 (N. D. Tex. 1952) (garnishment lien), *Fidelity & Deposit Co. v. Lovell*, 108 F. Supp. 360, 368 (S. D. Miss. 1952) (lien of creditor's bill attacking fraudulent conveyance); *United States v. Canadian American Co.*, 108 F. Supp. 206, 207 (E. D. N. Y. 1952) (county real estate tax lien); *Gulf Coast Marine Ways, Inc. v. The J. R. Hardee*, 107 F. Supp. 379, 385 (S. D. Tex. 1952) (preferred maritime liens); *United States v. Griffin-Moore Lbr. Co., Inc.*, 62 So. 2d 589 (Fla. 1953) (mechanic's lien); *Levy v. Tubby's Wine & Liquor Shop, Inc.*, 110 N. Y. S. 2d 653 (N. Y. City Ct. 1951), *rev'd on another ground*, 116 N. Y. S. 2d 207 (1st Dep't 1952) (city and state tax liens). *Cf. Hawkins v Savage*, 110 F. Supp. 615 (D. Alaska 1953) (attaching creditor regarded as a bona fide purchaser under Congressional legislation); *Exeter Banking Co. v. Sleeper*, 97

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N. H. 321, 87 A.2d 151 (N. H. 1952) (sustaining equitable interest as a mortgage enforceable against the United States as a rival lienor).

[16] Insofar as the literal language of Sections 3670-3672 controls, a reading which recognizes the validity of preexisting liens gives full and precise effect to the words used. The cases of divided ownership contemplated by the reference to "rights to property" in §3670 include property held subject to encumbrances. See, *e.g., United States Fid. & Guar. Co. v. United States,* 201 F. 2d 118 (10th Cir. 1952) (involving lien of surety on subcontractor's performance bond against fund payable to subcontractor); *Karno-Smith Co. v. Maloney* 112 F. 2d 690 (3d Cir. 1940) (" . . . the rights of the collector rise no higher than those of the taxpayer whose right to property is sought to be levied on").

[17] The general tax lien statute appeared first in 13 Stat. 470-1 (1865) and became Rev. Stat. §3186 (1875). The lien for duties on distilled spirits was originally provided in 13 Stat. 243 (1864) and extended in 13 Stat. 471-2 (1865). This special tax lien statute became Rev. Stat. §3251 (1875).

[18] 15 Stat. 125 (1868).

[19] 15 Stat. 128 (1868), which became Rev. Stat. §3262 (1875).

[20] In addition to the statutory references in notes 16-18, *supra,* it may be noted that the general tax lien statute was perfected in 14 Stat. 107 (1866), while the special distilling tax lien statute received legislative attention in 14 Stat. 157 (1866), and 14 Stat. 480 (1867). The general tax lien statute was amended by 20 Stat. 331 (1879) to prevent relation back of the lien.

[21] In addition to the cases cited in note 15, *supra,* may be added the following holdings, which deny paramountcy to the federal tax lien as against rival liens although the latter did not fall within the "specific, sparing, *ad hoc*" exceptions prescribed in §3672(a): *Adams v. O'Malley,* 182 F. 2d 925 (8th Cir. 1950) (county tax liens); In re *Taylorcraft Aviation Corp.,* 168 F. 2d 808 (6th Cir. 1948) (mechanic's lien); *United States v. Winnett,* 165 F. 2d 149 (9th Cir. 1947) (contingent right of setoff);

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United States v. Sampsell, 153 F. 2d 731 (9th Cir. 1946) (corporate franchise tax lien); *American Surety Co. v. City of Louisville Mun. Housing Comm'n*, 63 *F. Supp.* 486, 487 (W. D. Ky. 1945), *aff'd sub nom. Glenn v. American Surety Co.*, 160 F. 2d 977, 982 (6th Cir. 1947) (equitable lien of surety making good under performance bond, against unpaid balance in hands of obligee, for amount of expenditure plus interest); *United States v. Bank of Shelby*, 68 F. 2d 538 (5th Cir. 1934) (banker's equitable lien or right of setoff); In re *Fisher Plastics Corp.*, 89 F. Supp. 446 (D. Mass. 1950) (lien of trustee in bankruptcy); *United States v.* 52.11 *Acres of Land*, 73 F. Supp. 820 (E. D. Mo. 1947) (garnishment lien); *United States v. O'Dell*, 61 F. Supp. 966, 968 (E. D. Mich. 1945), *aff'd on other grounds*, 160 F. 2d 304, 306-7 (6th Cir. 1947) (city, county, and state tax liens); *New York Casualty Co. v. Zwerner*, 58 F. Supp. 473 (N. D. Ill. 1944) (equitable lien of surety on performance bond against funds due principal on construction contract); In re *Van Winkle*, 49 F. Supp. 711 (W. D. Ky. 1943) (equitable lien of surety on bond against retained percentage in hands of party in whose favor the bond ran); *Equitable Life Assur. Soc'y v. Moore*, 29 F. Supp. 179 (E. D. Ill. 1939) (assignment of shares of stock to secure loan); *Exchange Nat. Bank of Tulsa v. Davy*, 13 F. Supp. 226 (N. D. Okla. 1936) (assignment creating lien on equitable estate); In re *Mt. Jessup Coal Co., Ltd.*, 7 F. Supp. 603, 606 (M. D. Pa. 1934) (borough tax lien, ruling against United States having alternative basis, however); *Winston-Salem v. Powell Paving Co.*, 7 F. Supp. 424 (M. D. N. C. 1934) (involving street assessment, municipal and county ad valorem property tax, and state income tax liens); In re *Holmes Mfg. Co.*, 19 F. 2d 239 (D. Conn. 1927) (liens of receiver's certificates). In re *Caswell Construction Co.*, 13 F. 2d 667 (N. D. N. Y. 1926) (mechanic's liens); *The River Queen*, 8 F. 2d 426 (E. D. Va. 1925) (maritime liens for seamen and materialmen); In re *Wyley Co.*, 292 Fed. 900 (N. D. Ga. 1923) (involving state taxes); *Muhleman & Kayhoe, Inc. v. Brown*, 43 Del. 207, 45 A. 2d 521 (Super.Ct. 1945) (equitable pledge); *Ferris v. Chic-Mint Gum Co.*, 14 Del. Ch. 232, 124 Atl. 577 (1924) (involving state, county, and city tax and sewer liens); *Schmitz v. Stockman*, 151 Kan. 891, 101 P. 2d 962 (1940) (Statutory lien of landlord); *Board of Sup'rs v. Hart*, 210 La. 78, 26

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So. 2d 361 (1946) (lien and privilege of atachment); *Regan v. Metropolitan Haulage Co., Inc.*, 127 N. J. Eq. 487, 14 A. 2d 257 (Ch. 1940) (garage keeper's lien); *Cranford Co., Inc., v. L. Leopold & Co., Inc.*, 189 Misc. 368, 70 N. Y. S. 2d 183 (Sup. Ct. 1947), *aff'd*, 273 App. Div. 754, 75 N. Y. S. 2d 512 (1st Dep't 1947), *aff'd*, 298 N. Y. 670, 82 N. E. 2d 580 (1948) (mechanic's lien); *Knight v. Knight*, 272 App. Div. 499, 71 N. Y. S. 2d 357 (1st Dep't 1947), *aff'd*, 297 N. Y. 945, 80 N. E. 2d 344 (1948) (assignment of percentage of wages); *United States F. & G. Co. v. Triborough Bridge Auth.*, 297 N. Y. 31, 74 N. E. 2d 226 (1947) (equitable lien of surety on performance bond against money due contractor in default); *First Nat. Bank v. Southland Production Co.*, 189 Okla. 9, 17-18, 112 P. 2d 1087, 1095-6 (1941) (state tax lien securing unascertained amount); *United States v. Yates*, 204 S. W. 2d 399, 405 (Tex. Civ. App. 1947) (attachment lien and liens for material, equipment, and labor furnished public contractor, "perfected" by filing notice with office of public agency involved); *State v. Wynne*, 334 Tex. 455, 133 S. W. 2d 951 (Tex. 1939) (state tax liens).

In the following cases the federal tax lien prevailed over a nonfederal lien because the federal lien was prior in time: *Cobb v. United States*, 172 F. 2d 277, 278-9 (D. C. Cir. 1949); In re *Northwest Wood Products Co.*, 168 F. 2d 639 (7th Cir. 1948); *United States v. Greenville*, 118 F. 2d 963, 966 (4th Cir. 1941) (per C. J. Parker); In re *F. MacKinnon Mfg. Co.*, 24 F. 2d 156 (7th Cir. 1928); *United States v. Certain Lands*, 71 F. Supp. 76 (E. D. Mo. 1946); *United States v. Record Pub. Co.*, 60 F. Supp. 194 (N. D. Cal 1945); *Gerson, Beesley & Hampton, Inc., v. Shubert Theatre Corp.*, 7 F. Supp. 399, 400 (S. D. N. Y. 1934); *Republic Nat. Life Ins. Co. v. Hedstrom*, 346 Ill. App. 555, 105 N. E. 2d 782 (1952); *Littlestown Nat. Bank v. Penn Tile Wks. Co.*, 352 Pa. 238, 42 A. 2d 606 (1945); *cf. United States v. The Pomare*, 92 F. Supp. 185, 188 (D. Hawaii 1950).

The rule of "first in time, first in right" has been applied with respect to the federal estate tax lien arising at the tme of the decedent's death (Int. Rev. Code §827(a). *Paul v. United States*, 127 F. 2d 64, 66 (6th Cir. 1942), *aff'd sub.nom. Det. Bk v. United States*, 317 U. S. 329, and *Michigan v. United States*, 317 U. S. 338 (1943); *United States v. Security-First Nat. Bank*, 30 F.

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Supp. 113 (S. D. Cal. 1939), *appeal dismissed*, 113 F. 2d 491 (9th Cir. 1940); In re *Decker's Estate*, 355 Pa. 331, 49 A. 2d 714 (1946), *cert. denied sub nom. Decker v. Kann*, 331 U. S. 807 (1947).

The rule of "first in time, first in right" is no more than an application of the first rule of property: *Qui prior est tempore potior est jure. Broom, Legal Maxims* 227 (10th ed., Kersley, 1939). The universality of the rule has often been recognized by this Court. *Rankin & Schatzell v. Scott*, 12 Wheat 177, 179 (U. S. 1827); *Howard v. Railway Co.*, 101 U. S. 837, 845 (1879).

[22] A state real property tax lien arising under a statute very much like Conn. Gen. Stat. §1853 (1949) was enforced against the United States in *United States v. Alabama*, 313 U. S. 274 (1941). The City's liens were "perfected" as against the United States for the purposes of §67b of the Bankruptcy Act. 4 *Collier Bankruptcy* pars. 67.24, 67.26 (14th ed. 1942). The Government's statement at pp. 26-7 of its Brief that the decision in *Merchant's Bank & T. Co. v. Pettison*, 112 Conn. 652, 153 Atl. 789 (1931), shows, "how far from 'perfected' the City's liens are" and that they must yield in precedence to the policy of another statute, misses completely what was there decided. The Connecticut statute involved in the case purposed to require exhaustion of his security by any judgment creditor holding a mortgage which was a "first charge." The judgment creditor-mortgagee in the case sought to avoid application of the statute by arguing that its mortgage was not a first charge in view of the priority of Hartford's tax lien. The court did not deny that the tax lien was first in precedence or was not perfected, but it did reject the mortgagee's construction which would have gelded the statute. The legislature obviously intended to deal with a mortgage that was a first mortgage, even though not prior to the city's tax lien.

[23] Compare, *e.g., Brent v. Bank of Washington*, 10 Pet. 596 (1836).

[24] See H. R. Rep. No. 1018, 62d Cong., 2d Sess. (1912); Sen. Rep. No. 1315, 62d Cong., 3d Sess. (1913); 49 Cong. Rec. 1802 (1913); H. R. Rep. No. 1273, 68th Cong., 2d Sess. (1925); H. R. Rep. No. 855, 75th Cong., 1st Sess. 25-6 (1939); Sen. Rep. No. 648, 76th Cong., 1st Sess. 10 (1939); 84th Cong. Rec. 7481-2

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(1939); H. R. Rep. No. 2333, 77th Cong., 2d Sess. 173 (1942); Sen. Rep. No. 1631, 77th Cong., 2d Sess. 248 (1942). See also Cong. Globe, 37th Cong., 2d Sess. 2254-58, 2351-8, 2454-5 (1862); 22 A. B. A. Rep. 53-8 (1899); 25 A. B. A. Rep. 496 (1902); 37 A. B. A. Rep. 41, 570 (1912); 38 A. B. A. Rep. 618 (1913).

[25] *City of Richmond v. Bird*, 249 U. S. 174 (1919); 3 *Collier Bankruptcy* par. 64.403 (14th ed. 1941).

[26] H. R. Rep. No. 1018, 62d Cong., 2d Sess. 1 (1912).

[27] H. R. Rep. No. 1018, 62d Cong., 2d Sess. 2 (1912).

SUPREME COURT OF THE UNITED STATES

No. 92.—October Term, 1953.

United States of America, Petitioner, *v.* City of New Britain, Connecticut, et al.	On Writ of Certiorari to the Supreme Court of Errors of the State of Connecticut.

[February 1, 1954.]

Mr. Justice Minton delivered the opinion of the Court.

The question presented by this writ involves the relative priority of statutory federal and municipal liens to the proceeds of a mortgage foreclosure sale of the property to which the liens attached.

Two mortgages on the real property of a corporation located in the City of New Britain, Connecticut, were foreclosed by judgment sale in the Superior Court of Hartford County, and a gross sum of $28,071.24 was realized. Against this fund, there were claims of some $31,000, including expenses of the sale, the two mortgages, a judgment of record, and various statutory liens asserted by the City and by the United States. The federal liens, securing unpaid withholding and unemployment taxes and insurance contributions totaling $8,475.13, were created by § 3670 of the Internal Revenue Code.[1]

[1] "SEC. 3670. PROPERTY SUBJECT TO LIEN.

"If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person." I. R. C., § 3670, 26 U. S. C. (1946 ed.) § 3670.

They arose at the times the assessment lists were received in the office of the Collector of Internal Revenue for Connecticut [2] on various dates between April 26, 1948, and September 21, 1950. The City's liens, which attached to the specific real estate sold in the total sum of $3,587.71, are for delinquent real-estate taxes and water rent. The real-estate taxes became due on various dates in 1947 through 1951, the liens attaching in each case as of October 1 or other assessment date of the prior year; [3] the water-rent liens arose upon failure to pay [4] and date from December 1, 1947, to June 1, 1951.

A Connecticut statute provides that real-estate tax liens "shall take precedence of all transfers and incumbrances" in any manner affecting the property subject to the lien.[5] Another state law gives the water-rent liens "precedence over all other liens or incumbrances except taxes" on the property subject to the liens.[6] The funds available for distribution being insufficient to pay all claimants in full, the Superior Court directed that the expenses, the City's liens, the mortgages, the judgment lien, and the United States' liens be paid in that order. The United States appealed from the judgment insofar as the statutory liens of the City were given priority over those of the United States. The Supreme Court of Errors of Connecticut affirmed, 139 Conn. 363, 94 A. 2d 10, and we granted certiorari, 346 U. S. 809.

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[2] I. R. C., § 3671, 26 U. S. C. (1946 ed.) § 3671.

[3] Conn. Gen. Stat., 1949, c. 88, § 1853.

[4] Conn. Gen. Stat., 1949, c. 34, § 758.

[5] Conn. Gen. Stat., 1949, c. 88, § 1853.

[6] Conn. Gen. Stat., 1949, c. 34, § 758. As construed by the Supreme Court of Errors of Connecticut in this case, the term "taxes" in § 758 includes "only those taxes which may be assessed in favor of the state or some subdivision thereof and which, under the law, are secured by specific liens upon real property." 139 Conn. 363, 367, 94 A. 2d 10, 12.

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We are here dealing with several statutory liens, some owned by the City and some by the Federal Government, on real estate. The Supreme Court of Errors stated that the City's liens were specific and perfected. Such characterization of a lien by the State is not, of course, conclusive against the Federal Government. *United States* v. *Security Trust & Savings Bank*, 340 U. S. 47, 49; *Illinois* v. *Campbell*, 329 U. S. 362, 371. However, we accept the holding as to the specificity of the City's liens since they attached to specific pieces of real property for the taxes assessed and water rent due. The liens may also be perfected in the sense that there is nothing more to be done to have a choate lien—when the identity of the lienor, the property subject to the lien, and the amount of the lien are established. The federal tax liens are general and, in the sense above indicated, perfected. But the fact that one group of liens is specific and the other general in and of itself is of no significance in these cases involving statutory liens on real estate only. *United States* v. *City of Greenville*, 118 F. 2d 963, 964. A mortgage is a specific lien, yet "[a] statutory lien is as binding as a mortgage, and has the same capacity to hold the land so long as the statute preserves it in force." *Rankin* v. *Scott*, 12 Wheat. 177, 179.

Thus, the general statutory liens of the United States are as binding as the specific statutory liens of the City. The City gains no priority by the fact that its liens are specific while the United States' liens are general. Obviously, the State cannot on behalf of the City impair the standing of the federal liens, without the consent of Congress. *Michigan* v. *United States*, 317 U. S. 338, 340; *United States* v. *Oklahoma*, 261 U. S. 253, 260; *United States* v. *Snyder*, 149 U. S. 210, 214. On the other hand, the federal statutes do not attempt to give priority in all cases to liens created under the paramount authority of the United States. The statute creating the federal liens

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here involved, I. R. C., § 3670, does not in terms confer priority upon them.

When the debtor is insolvent, Congress has expressly given priority to the payment of indebtedness owing the United States, whether secured by liens or otherwise, by § 3466 of the Revised Statutes, 31 U. S. C. (1946 ed.) § 191. In that circumstance, where all the property of the debtor is involved, Congress has protected the federal revenues by imposing an absolute priority.[7] Where the debtor is not insolvent, Congress has failed to expressly provide for federal priority, with certain exceptions not relevant here,[8] although the United States is free to pursue the whole of the debtor's property wherever situated. The State, having a lien only upon property within its boundaries, may not reach beyond the state line to fasten its lien upon other property. The record does not establish that the taxpayer in this case was insolvent.

It does not follow, however, that the City's liens must receive priority as a whole. We believe that priority of these statutory liens is determined by another principle of law, namely, "the first in time is the first in right." As stated by Chief Justice Marshall in *Rankin* v. *Scott, supra:*

> "The principle is believed to be universal, that a prior lien gives a prior claim, which is entitled to prior satisfaction, out of the subject it binds, unless the lien be intrinsically defective, or be displaced by some act of the party holding it, which shall postpone him in a Court of law or equity to a subsequent claimant." 12 Wheat., at 179.

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[7] *United States* v. *Gilbert Associates*, 345 U. S. 361; *United States* v. *Waddill, Holland & Flinn*, 323 U. S. 353.

[8] *E. g.*, I. R. C., § 2800 (e), 26 U. S. C. (1946 ed.) § 2800 (e) (distilled spirits tax lien).

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This principle is widely accepted and applied, in the absence of legislation to the contrary. 33 Am. Jur., Liens, § 33; 53 C. J. S., Liens, § 10b. We think that Congress had this cardinal rule in mind when it enacted § 3670, a schedule of priority not being set forth therein. Thus, the priority of each statutory lien contested here must depend on the time it attached to the property in question and became choate.

The United States in claiming priority for all its liens relies heavily on two recent cases from this Court, *United States* v. *Security Trust & Savings Bank, supra,* and *United States* v. *Gilbert Associates,* 345 U. S. 361. We do not think they are inconsistent with our decision in this case.

The *Security Trust* case involved an *inchoate* attachment lien that had not ripened into a judgment at the time the federal tax liens attached. We noted that "[n]umerous contingencies might arise that would prevent the attachment lien from ever becoming perfected by a judgment awarded and recorded." 340 U. S., at 50. Thus, the attachment lien was "merely a *lis pendens* notice that a right to perfect a lien exists." *Ibid.* Such inchoate liens may become certain as to amount, identity of the lienor, or the property subject thereto only at some time subsequent to the date the federal liens attach and cannot then be permitted to displace such federal liens. Otherwise, a State could affect the standing of federal liens, contrary to the established doctrine, simply by causing an inchoate lien to attach at some arbitrary time even before the amount of the tax, assessment, etc., is determined.[9] Accordingly, we concluded in *Security Trust* "that the tax liens of the United States are superior

[9] See Sarner, Correlation of Priority and Lien Rights in the Collection of Federal Taxes, 95 U. of Pa. L. Rev. 739, 755–761.

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to the inchoate attachment lien . . . ." *Id.*, at 51. In the instant case, certain of the City's tax and water-rent liens apparently attached to the specific property and became choate prior to the attachment of the federal tax liens.

The State and the United States were both holders of general statutory liens in the *Gilbert Associates* case. But the question we have here did not arise there because that was a case involving personal property and insolvency of the taxpayer. We said in that case:

> "Where the lien of the Town and that of the Federal Government are both general, and the taxpayer is insolvent, § 3466 [Revised Statutes] clearly awards priority to the United States." 345 U. S., at 366.

Here the contest is between two groups of statutory liens, one specific and one general, attached to the same real estate, with no question of insolvency involved; therefore, "the first in time is the first in right."

The State finds the rule of "first in time, first in right" not applicable because of § 3672 of the Internal Revenue Code,[10] which makes the lien of the United States invalid as to the prior recorded mortgages and the judgment in this case. It points out that the mortgagee could have paid the delinquent real-estate taxes and water rent, with the amount so paid becoming part of the mortgage debt covered by the mortgage lien,[11] and suggests that the federal tax lien would therefore be invalid as to such

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[10] "SEC. 3672. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

"(a) INVALIDITY OF LIEN WITHOUT NOTICE.—Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector . . . ." I. R. C., § 3672, as amended, 53 Stat. 882, 26 U. S. C. (1946 ed.) § 3672.

[11] Conn. Gen. Stat., 1949, c. 361, § 7192.

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amount by virtue of § 3672.[12] From this and a belief that Congress did not intend, by giving mortgages and judgments priority over federal tax liens, to supersede state laws making certain interests superior to mortgages and judgments, the Supreme Court of Errors concluded that by enacting § 3672 Congress "expressed the intention that federal liens should be subordinated to such mortgages and judgment liens as are described therein and, consequently, subordinated to such other incumbrances as have priority over those mortgages and judgment liens." [13]

We do not agree. The United States is not interested in whether the State receives its taxes and water rents prior to mortgagees and judgment creditors. That is a matter of state law. But as to any funds in excess of the amount necessary to pay the mortgage and judgment creditors, Congress intended to assert the federal lien. There is nothing in the language of § 3672 to show that Congress intended antecedent federal tax liens to rank behind any but the specific categories of interests set out therein, and the legislative history lends support to this impression.[14]

Under the circumstances, we vacate the judgment of the Supreme Court of Errors of Connecticut and remand the case to that court to have determined the order of priority of the various liens asserted, in accordance with this opinion.

Judgment vacated.

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[12] We need not now pass upon the merits of this suggestion since the situation is not presented by the record in this case.

[13] 139 Conn. 363, 373, 94 A. 2d 10, 15.

[14] See *United States* v. *Gilbert Associates*, 345 U. S. 361, 364; *United States* v. *Security Trust & Savings Bank*, 340 U. S. 47, 51 (concurring opinion).

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